

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1965

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1965

MODERN HOME INSTITUTE, INC.
ROMAC RESOURCES, INC.

Plaintiffs - Appellants

VS.

HARTFORD ACCIDENT AND INDEMNITY
COMPANY
HARTFORD FIRE AND INSURANCE CO.
THE AETNA CASUALTY AND SURETY CO.
THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INDEMNITY CO.
THE CONNECTICUT ASSOCIATION OF
INDEPENDENT INSURANCE AGENTS, INC.

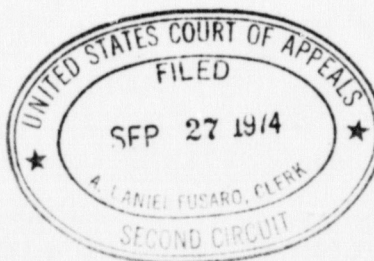
Defendants - Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT

APPENDIX I

J. DANIEL SAGARIN, ESQ.
855 Main Street
Bridgeport, Connecticut

LEONARD A. SCHINE, ESQ.
JOEL C. KARP, ESQ.
P. O. 5008
Westport, Connecticut



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EXCERPTS FROM TESTIMONY OF
ROBERT E. D'ARPA

Q And all such employees worked in Mount Vernon?

A Yes. However, if you want to be specific about that also we employed a number of people that would gather the information on the outside also. In other words, when we got into remote areas we would ask people in their own local community to gather the information for us.

Q Now, this was the sole object of your work at that time, the names of prospective parents; is that correct?

A Yes.

Q You say you went into a new area in 1958?

A Right.

Q Would you describe the information that you then proceeded to obtain?

A I guess I should start at the very beginning, how we gathered the information. I think that if you purchase a home in most areas, in most states, a deed would have to be recorded in the county court house. This, of course, is a matter of public information. You can walk into any court house and into the deeds and records department and obtain a record of a deed. We wanted to get as much coverage as we possibly could, gathering all the names of people that moved into an area. Therefore, we employed people to go into the county court house into the deeds and records department and

write down the name of the person that had purchased a new home or an old home, a resale. This information, of course, was basically limited, because in most cases you would have just the name of the person, you wouldn't have the location from which they came from.

* We would know that they purchased a house, as a case in point in Hartford, but we don't know where they came from or just when they were moving in. Basically, we only had the name and sometimes an address, we never had a telephone number.

We had to break down the information and be far more specific, because some people wanted more information about a family. Therefore, we had to research -- and I use the word "research" -- we had to find out where they were living at the present time, when they were moving, how many children they had, if they had an automobile, and many other things about the family. You might call it a family profile.

Many different types of merchants, of course, were interested in many different things. As a case in point I would say that a milk company, a dairy, would like to know if they have small children; a drug store would be interested in that. They would like to know also what kind of a home it was, was it ten years old, twenty-five years old. Certain

people, a lumber yard would be interested in that.

I should say that we set up a system of interviewers throughout the areas that we were interested in.

Q I don't mean to interrupt, but are we talking about the period 1958 to what?

A To 1963.

Q All right.

A The interviewer would try to locate the buyer at their present address and she did this, of course, through directories and using information on the telephone that she was constantly using.

After she found the buyer, was able to locate the buyer, she conducted an interview with them, usually it was a woman, and asked a series of questions. After we had the information, of course, it was broken down specifically to the local area. The program was sold to retail merchants in general. Again I say anything from a drug store to a hardware store, an automobile dealer, a florist, whatever it may be, any type of retailer that would be interested in acquiring the new consumer.

You must remember that this was an important program for the retail merchant in each area for the very simple reason that if he wanted a new customer the best new customer

to have is one that has not associated themselves with business people in that area.

This information was broken down in list form and was sent to the retail merchant. He could, if he wanted to, follow these names up himself by doing a direct mail program. He may call them on the phone or welcome them into his town, or if he desired do a direct mail program which would consist primarily of a six by nine envelope in which we had different types of letters welcoming them into the community and asking them to stop in to see the retail merchant and redeem the coupon for a gift of one sort or another.

Q In what areas of the country did you conduct these surveys?

A I would say that practically the entire eastern coast, including part of the midwest such as Chicago and Cleveland down into the Carolinas, down into Florida. And I would say that would be it.

Q And your customers were in general retailers?

A Well, I say in general retailers. I would say that the bulk of them were retailers. However, we had some national firms included in this. If you go one step above the retailer, you had banks that were interested in this. We had many insurance agents that bought our service through-

out the country.

Q Were there any other than banks and insurance agents and local retailers, were there any other customers?

A Well, publishing, newspapers were interested in our service also.

Q Will you name some of them?

A Not right offhand.

Q Can you name any banks that used your services?

A One that I am directly familiar with would be the County Trust Company in Westchester County in White Plains. I think recently it has incorporated with a New York branch. I'm not too sure of that.

Q Specifically what service did the bank use?

A They wanted the names of the new families. And I can't remember if they had a mailing piece or not, or if they did their own mailing. I don't recall.

Q In other words, they obtained from you the names of new families in a community; is that correct?

A That's correct.

Q Any other information?

A Other than the new families?

Q Yes.

A All other information I mentioned before --

Q Was RCA ever one of your customers?

A Not in 1958.

Q At a later time?

A You may be jumping the gun, but when we were in Cleveland later on, not directly connected with the operation of the newcomer program, we had inquired of many of the large manufacturers --

Q My question is: Was RCA ever one of your customers or clients?

A On a test basis.

Q Tell me what test basis it was and when.

A Sometime, and I believe in 1961, a RCA distributor in Cleveland, Ohio, asked us if we could gather information for them relative to people that had dryers, washing machines, and also color TV.

Q Did you actually do that for them?

A We did a certain amount of testing for them.

Q Were you paid by them for your services?

A I believe we were.

Q Do you have any doubt about it?

A Well, I kind of have some doubt about it, because when you are more or less experimenting on a trial and error basis you may sometimes offer a test to a concern at no

charge sometimes.

Q Quite frequently they were rejected tests and would not be a client of yours?

A I don't understand the question.

Q I will withdraw the question. In other words you have often offered information to customers without charge; is that correct?

A Not often. -

Q But you have done it?

A At times we have.

Q Do you remember the name of the distributor in Cleveland for RCA that requested the information?

A Right offhand I don't know. I could gather it.

Q It is something you could get for us?

A Oh, definitely.

Q You certainly could have it for us by next Tuesday; could you not?

A If you let me home early enough I can give it to you this afternoon.

Q What other nationally known companies have been clients or customers of your company?

A For which program?

Q Any program.

A Any program?

Q Yes.

A United States Gypsum Company.

Q In particular what information did they secure from you?

A They take ads in our industrial publication.

Q Did you furnish any service to them?

A Yes. We distribute for them to architects, engineers, general contractors, sub-contractors, public work officials, and over eight thousand classifications in the industrial building field.

Q All this by mail?

A Well, it is a publication that has over four hundred and fifty pages in it.

Q What is the name of the publication?

A It is called The Building Information Directories and Catalogues.

Q It is published how often?

A Once a year.

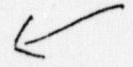
Q Who publishes it?

A Our company, our firm under the name of Building Information, Incorporated.

Q You are speaking now of what company when you say

A I will have to ask you which years you are referring to?

Q If you can identify them as to years, fine. Let's take 1958 to 1960.

A From 1958, actually to 1963, we were in the newcomer program. From 1960 to 1962 we undertook a research program whereby we were compiling family profiles. 

Q Who were your customers for this program?

A On the family profile?

Q Yes.

A We had banks, oil companies, insurance agents, department stores.

Q Anybody else, any other classification?

A I couldn't go right down the gamut of it. There are many.

Q Do I take it this was abandoned in 1962?

A That's correct.

Q Why?

A Why was it abandoned?

Q Yes.

A I would say we abandoned it because we had stopped or we could not sell our program, our information.

Q Did I understand you to say you reached a point

of as having had with the two department stores in Cleveland, merely an agreement to furnish to them certain names?

A A specific product, if you want to put it that way.

Q Were they also in the nature of tests?

A Yes.

Q I take it you furnished one list to each of those two department stores?

A I won't say lists. We weren't selling lists; we were selling specific information.

Q In any event, they did not ask for a repeat of that information, the two department stores?

A They couldn't have. We closed down our office.

Q How long did the Cleveland operation go?

A I believe it was sometime in September of 1960 to approximately, I believe, April of 1961.

Q To April of 1961?

A Right.

Q When did you close down your operation?

A In Cleveland?

Q Yes.

A In 1961.

Q Your most extensive operation in acquiring information was in the Cleveland area up to that point; wasn't it?

Noted

Q So that no effort was made by you to comply with this request?

A That's correct.

Q Can you tell us who the agents were who so requested you? }

A It would be impossible at this time to tell you.

Q You don't even know where they might have been located?

A In the eastern area. That's the only thing I can say.

Q Now, when did any company that we mentioned, and yourself, first make any effort to acquire X-dates?

A In Cleveland.

Q When and what were the circumstances?

A In 1961 an insurance agent asked us if we could acquire the expiration date for them.

Q What was the name of the agent?

A I believe that was Nationwide, a Nationwide agent in Cleveland by the name -- or the manager which might be vague at this time -- it was something like C-h-i-o, something like that. ✓

Q C-h-i-o?

A Something like that.

Q You say he was an agent or an employee of Nation-wide?

A I really don't know what his capacity was. He might have been a manager or something.

Q You say "he asked us." Who do you mean by "us?"

A Our office.

Q And your office is what?

A In Cleveland.

Q Operating under what name in Cleveland?

A Modern Home Institute.

Q Did you actually have an office building there?

A Yes.

Q What was your connection with the Cleveland office?

A Primarily in sales and setting up the entire program.

Q How much time did you spend in Cleveland, let's say during 1961, 1962?

A I spent full time in Cleveland from April -- from approximately September, 1960 to April, 1961.

Q Was it in April, 1961 that the office was closed?

A That's correct.

Q Will you tell us specifically what Modern Home did following the request of this agent that you refer to to secure X-dates?

A We started to secure X-dates. 7

Q What did you actually do?

A We asked the question of families.

Q In other words, you simply added to the list of questions that your employees or agents were already using, an additional question?

A I wouldn't say it was as simple as all that.

Q Well, explain it to me.

A The questions had to be changed in order to acquire ✓ this type of information.

Q Did you have a form of questionnaire that you were submitting to householders in 1961 when you first got this request?

A We were questioning families, interviewing families in 1961.

Q Did you have a form of questionnaire that you used?

A Yes.

Q Incidentally, do you have one of those available today?

A No, I do not.

MR. DIXON: Would you arrange to have one available next Tuesday?

MR. KARP: We have objected to submitting

that and the Court has not ruled on it. It was the subject of a motion about two or three weeks ago concerning that question.

MR. DIXON: For the record you will object to the production of a questionnaire form that was used by Modern Home Institute prior to the time they started to ask for X-dates?

MR. KARP: That is correct.

MR. DIXON: I think I should state that we have never asked before until I asked now for the form of questionnaire, Mr. Karp.

MR. KARP: In your form for production and in your interrogatories you asked about the method by which we obtained them, and on oral argument we made the point that the thing we were trying to protect was the questionnaire, and I thought I made that quite clear in argument. But this was the part that we were trying to protect under the trade secret doctrine.

MR. DIXON: Do you claim that the questionnaire that Modern Home used prior to 1961 is a trade secret?

MR. KARP: Yes, because the questionnaire is

to constantly change questionnaires all the time; isn't that true? ✓

A That's correct.

Q But when you were asked to get expiration dates are you telling me that you now went out with that sole purpose in mind?

A To a point we did when we had the question asked of us.

Q Now, this was in 1961? ✓

A That's correct.

Q Specifically what time in 1961, if you recall?

A It was in Cleveland and I --

Q Go right ahead. I'm sorry.

A I can't remember the exact date. I would say about January possibly, or around that time in 1961.

Q Did you continue through April to do what you had been doing anyway in Cleveland?

A I would say that from the time we were asked the specific question to acquire X-date, there was a gradual change in our operation.

Q What was that change?

A It was directed primarily to the information requested concerning X-date. NB. ✓

fifty, some maybe would take two hundred.

Q The information that you furnished them was acquired by you between January 1 and the date they were furnished the agent in 1961; is that correct?

A That's correct.

Q And you were able to furnish three thousand names. Over what period of time did you furnish three thousand names, from the time you first got the request until you actually gave them out?

A It was a short period of time.

Q A month or two?

A Possibly a month or less than that.

Q When you furnished this information to the agents what information did you give them?

A Information relative to automobile insurance expiration.

Q What did you tell them about each one of them?

A Name, address, expiration date.

Q That's all?

A That's all.

Q And these names and addresses and expiration date, how did you get that information or how did Modern Home get that information?

A That's correct.

Q When you say that you furnished three thousand names were there any duplications on that list or were these three thousand different persons, addresses?

A We sold to each agent approximately, or purchased approximately a hundred names. These names could also be sold to another agent.

Q So that actually it was considerably less than three thousand names that you actually obtained in that period of a month or less; is that right?

A I won't say that.

Q Tell me how many names, how many separate names were furnished?

A I would say approximately three thousand.

Q Did any agent purchase more than one hundred?

A I believe that some of them may have purchased two hundred at a time.

Q What was the basis upon which you sold to an agent a hundred names, on a trial basis or --

A I would say it was on a trial basis.

Q What do you mean by that, what were the terms of your arrangement with the agent?

A We actually had no terms other than the fact that

they ordered names from us and that they would try to use them to the best of their ability.

Q How were you paid for these hundred names that you submitted to the agent?

A We sold these names at that time for ten cents a name.

Q Now, were you to be paid any more in the event that an agent was successful in selling a policy to one of the named one hundred?

A There was no contract with these agents. They just purchased the names at ten cents apiece and if they wanted to reorder them they could do so.

Q How did they pay, by cash or check?

A By check.

Q Did you bill them?

A Some I believe we billed. Some of them sent in their checks before they even received the list of names.

Q Are there any records today showing the names of the agents who purchased these?

A Yes.

Q And those would be in the possession of whom?

A They should be in our records, in our files in our office.

A That's correct.

Q1 Is that my understanding of what you said?

A That's correct.

Q2 This contemplates that one company would purchase all of the ex dates that your company produced?

A That's correct.

Q3 While we're on this subject, you did propose or make a certain proposition to a number of insurance companies, did you not?

A That's correct.

Q4 What were the basic terms of that proposition for the sale of ex dates?

A The proposal that we did offer -- it may have varied at times, but actually it all did consist primarily of offering ex dates on a national basis to two companies at a cost of 45 cents per ex date. We also stipulated in our proposal that the company would have to take all of the ex dates regardless of expiration. In other words, we were not going to bank. If we started to supply information in June, we would give them also, let's say, June all the way up until December, regardless of how the ex dates came across.

Q5 Now, let me go back over that a minute. What two types of companies did you contemplate would purchase this?

A We felt that it would be profitable to both the direct writer, of course, and the agency type insurance company.

Q1 You proposed that each of these two who might take your service would purchase at the rate of 45 cents each ex date that you furnished them?

A That's correct.

Q2 Now, do I understand that what you are saying is that there would be an obligation on the part of both the direct writer and the agency writer to purchase all of the ex dates that you furnished?

A That is correct.

Q3 You made this clear in your conversations with each of the companies who are named defendants here, did you not?

A Definitely. However, we didn't have any objections if ultimately it could be sold to two direct writers or two agency type firms.

Q4 And if a direct writer and an agency writer were your two customers, each would purchase the same list, is that correct?

A That is correct.

Q5 So that the amount which your company would realize would be 90 cents per ex date, is that correct?

Q1 Now, for approximately how long did you talk to Mr. Ellis on the morning of May 8th?

A If I can recall, I think it was quite an extended conversation. I believe we even had lunch together.

Q2 Did you have another appointment that afternoon while you were in Hartford?

A I am very happy I brought these with me. On Tuesday, May 8th I also had an appointment at two p.m. with Mr. Channing Barlow.

Q3 Of the Hartford group?

A That is correct.

Q4 All right. Now, it is your recollection, then, that you were with Mr. Ellis for perhaps two or three hours?

A Approximately. I do know that I did have lunch with Mr. Ellis a number of times, and that may have been one of the days.

Q5 Now, this was your first contact, was it not, with Mr. Ellis?

A That's correct.

Q6 You tell us, using whatever notes you may have, what you told Mr. Ellis and what he told you. In other words, give us in as great detail as you can the conversation that you had with Mr. Ellis on May 8th. If you will excuse me, I

phone on May 9th when was your next contact with him?

A My records -- that Mr. Ellis called on June 29th.

Q1 Now, is it correct to say, then, that between May 9th and June 29th you had no contacts with him?

A Not that I can recall. Unless I might have called him at one time or another and asked him if he had any results of his test. Possibly I could have.

Q2 But your records show that -- at least your records show that your next contact with him was on June 29th?

A That is correct.

Q3 What was that contact?

A Actually, Bill apologized for taking so long to give us a report on the test. He stated that he was delighted with the test so far -- and I am actually reading this -- and the Newark office found that the names, addresses and expiration dates were 95 to 100 per cent correct. They had called on 34 out of the 100 names submitted. They reported they had made 7 sales as a result of the 35 calls made.

Q4 I take it this is information he gave you on the telephone?

A Yes.

Q5 And that you wrote down as he gave it to you, is that correct?

A That's correct. Not word for word, but --

Q1 What else did he say, and did you say to him, on that day?

A I think we discussed at that time to set up an appointment for the next week, or something like that.

Q2 Have you read to me all of your notes with respect to that conversation with Ellis on the telephone, Mr. D'Arpa?

A As I go through this, Mr. Dixon, you are right. There was something very important at that time. Mr. Ellis at that time mentioned to me some of the problems that were developing based on the publicity that had been given the ex date program.

Q3 Now, again we are referring to the telephone conversation of June 29th?

A Yes.

Q4 You are certain it was on June 29th? At least, your records indicate?

A Yes. Right. Yes. I'm pretty sure of that.

Q5 All right. And --

A Now --

Q6 Go ahead, tell me what he said.

A Just that. That they were having problems and that there was some publicity connected with the ex date program.

Q1 This didn't surprise you at that time, did it?
Weren't you aware that there had been some publicity on this program?

A Mr. Dixon, I believe that this is the first time that it actually came to our attention, was when Mr. Ellis discussed it during our conversation.

Q2 Now, did he enter into any specifics as to what these problems were?

A He did tell me that he was sending me a letter that he was sending out, interoffice communication, which he sent out on June 27th, and he put this -- dated it June 29th, which was the same day of our conversation.

Q3 Did he send you a copy of that memo?

A Yes. I have the original memo with his handwriting. It says: "Bob: As per our phone conversation today, don't count us out on this. We will have problems, but who doesn't."

Q4 Now, may I look at the memo that he sent you, Mr. D'Arpa? May I have just a minute?

MR. DIXON: I would like to have this marked for identification. And we will make copies of it.

MR. JULIANELLE: Don't you have copies of it?

MR. KARP: You should have copies of it.

MR. DIXON: This is included in those things

you sent us?

MR. JULIANELLE: Yes. It should be.

MR. DIXON: This was not included in the items that were sent to us, Joel. Do you understand that everything in his file here had been sent to us?

MR. KARP: Yes.

MR. JULIANELLE: Yes.

MR. DIXON: Well, may we have just a five minute recess for me to run through his file on this? The Aetna file only.

MR. JULIANELLE: Yes.

(Whereupon, a brief recess was taken.)

DIRECT EXAMINATION BY MR. DIXON, (cont'd):

Q1 Mr. D'Arpa, in your telephone call with Mr. Ellis on June 29th he apparently told you that they were having some problems?

A I believe, at the time -- he said there were some rumblings going on.

Q2 Now, was he more specific than that?

A He used the phrasing that there seems to be some opposition here and some rumblings, and he said, "However, I will send you some of the news releases from the organizations and the newspapers that have come out just recently."

figure, our requirements were that Aetna or any other company would have to buy the full amount of our ex dates that we were able to acquire.

Q1 You made it clear to Mr. VanGils and Mr. Ellis on that date that The Aetna, if it chose to go along, would be expected to absorb your entire output of ex dates?

A That is correct.

Q2 What else do you recall, if anything, about the conversation?

A Here again, of course, there was reference made to the opposition that seemed to have been building up at that time, and Bill more or less discounted this opposition because he felt it was just talk, and, "like any new product," I remember he said at the time, "There's always a certain amount of hesitation in accepting it," he said. But he couldn't see why it would interfere with their interests at that time.

I want you to know that Mr. Ellis was extremely interested in the program from the very beginning and I think to the very end.

Q3 He was interested in it at least up until July 17th when he advised you The Aetna would not take it, was he not?

A Up until July 17th, yes.

Q4 Yes. Now, you say that he did send you some material.

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a number of agents and had a majority of acceptance. And I asked him --

Q1 Did he tell you when that meeting had been held with a number of Aetna's agents?

A No.

Q2 All right.

A And I asked him, of course, why it had not been accepted. He smiled and said he didn't know if it was worth the beating that they would have to take.

Q3 Was he more specific than that?

A Well, I asked him, "What kind of a beating are you referring to?" His reply, of course, was the pressure from other companies. Then he elaborated. He went on to say that they would have to contend with the Commissioner of Insurance, and mentioned the Hartford Company, Channing Barlow. And I asked him how he fitted into the picture, and his answer was that Barlow gave out press releases, that was the first one, to all the organization publications, sent letters to agencies and he used every possible means of publicizing our particular program.

Bill went on to say that he thought that Premo was wrong. As far as elaborating on Premo, he also filled me in on his personal background. We'll skip the next part.

another. May possibly -- I see it's 123 William Street. I can certainly find out if that is an office of The Hartford Insurance Company. I could tell you who Mr. Cox is then.

Q1 I am only asking for your best present recollection, and you have none, is that it?

A I would only be fabricating the story if I told you that I could try to recollect that far back what actually was discussed.

Q2 Now, after the words "appointment Tuesday, May 8th, two p.m.," there's some more of your handwriting?

A Right.

Q3 When did you write that part of it?

A I would say that that was written on May 8th. No, I'm sorry. That was written on May 3rd. The title on there is "call May 3rd."

Q4 To make the appointment for May 8th, is that it?

A Correct.

Q5 Two p.m.?

A That is correct.

Q6 Then there are three names, where did you get those names?

A I believe that Mr. Barlow must have told me that he would like to have two other gentlemen present at the time.

Q1 What does the last line bring back to your mind?

A "Interested. Send letter." And that must have been written at a later date. I believe that that must have been after the meeting of May 8th. Maybe I can give you a better explanation of this, if you want it complete.

I jotted down here that I called May 3rd. I see that the appointment was made Tuesday, May 8th, at two p.m. Now, what I have here is a brief notation that Channing Barlow was present, Mr. Gilmore and Mr. Cagney. "Interested. Send letter. Explain to two companies." The letter was sent. This is the closest I can get to recalling exactly. And I do recall that there was a reason for the word "two companies." There's a specific reason for that, that I recall.

Q2 What do you recall about that?

A I recall definitely that Mr. Barlow was most interested to know if this would be offered to them on an exclusive basis, and I did stress very honestly to Mr. Barlow that it was not the offer to one company only, but to two companies. And that's why I wanted to make sure that the proposal did include that part whereby we were offering this to two companies.

Q3 How long were you with these gentlemen on May 8th?

A It's part of my notes here that are missing.

MR. BRADLEY: I'm sorry, I didn't hear the

companies and The Hartford or anyone connected with The Hartford with reference to this subject matter?

A Mr. Piel, what do you mean by the Wallach companies?

Q1 Well, I mean Modern Home Institute and Romac Resource

A I see. To the best of my knowledge, that did end the conversation or the communication with The Hartford Insurance Company.

Q2 There were no other conversations, is that right?

A Not that I could recall, no, there were no others.

Q3 Now referring to Exhibit 13, the letter of May 9, if you will glance at that, refresh your recollection about it. Did Mr. Wallach correctly set forth there what you had presented orally to Mr. Barlow and Mr. Gilmore and Mr. Cagney?

A I would say that this has the main ingredients of our conversation.

Q4 All right. Now I would like you to tell us, as -- according to your best present recollection exactly what happened at that conference, what you said and what any of them said. We want to get your complete recollection about that conference on May 8th.

A If I can recall, there were three people present, the ones you just mentioned. And the first question that Mr. Barlow asked me was -- and in more or less, the terms -- the

terms of the statement were: "What assurance do I have that, if I want the program, that I can have it?" And I said to him, "There is absolutely no assurance that you can have the program if you want it. There's certain conditions that we will have to see first that can be met." Mr. Barlow accepted this and then asked me to give a full explanation of the ex date program. Mr. Barlow was interested to know if we could get the name of the carrier. This he went into quite deeply. In other words, could we furnish the correct writer's names as well as the agency type names. Here again I gave him the same answer that I gave Mr. Ellis, that we could, but not in the large quantities that would be relative to the number of ex dates that we would furnish on this.

Then Mr. Barlow asked if he would be exclusive again, and I said he would not be exclusive with this, that we would have to offer it to two companies. We'd try to offer it to an agency type insurance company and a direct seller.

When I gave Mr. Barlow this answer, I -- my personal feelings, that this quite disturbed him, that it would be offered to two companies. He might have been under the impression in the very beginning that it was an exclusive basis. I assured him that it was not and it could not be.

The two gentlemen that were present there, Mr. Gilmore

and Mr. Cagney, I don't know which one, were very interested in the program and were starting to ask more questions relative to distribution and how the names would be furnished. At a certain point Mr. Barlow cut the conversation short. He told me -- he stood up and he told me that they would discuss this and he would let me know. The best of my recollection, that is exactly.

Q1 That's the full substance of it?

A That's the full substance of it. There were a number of questions asked, such as, "Well, what areas can you leave out? What's the quantity? How much in advance? Can you give us the information, general information pertaining to the program?"

Q2 Did you make clear to Mr. Barlow, as you told us you did to Mr. Ellis, that the company that signed up with you would have to take all the names that you generated?

A Oh, yes.

Q3 And did you give him an estimate as to the number of names that you would be generating?

A I might have. I can't recollect. I'm pretty sure that Mr. Barlow would ask that question.

Q4 But you don't have a specific recollection?

A No.

Q1 Did you tell him or make clear to him that the semi-exclusive basis, these two companies, would have the information, would have the names for a year and then you could sell the same expiration dates to somebody else?

A Yes, there was a reference made to that. And I can see from the letter that it was included here.

Q2 It was or was not?

A I believe it was.

Q3 That's Exhibit 13?

A I think it's 14. 14. The names would be released from this condition after thirty days after the policy expiration date. In other words, thirty days after the expiration date came up it would revert back to Modern Home Institute.

Q4 What did you explain to him as to why you would have it revert back?

A They had the information --

Q5 I am asking you whether you explained it to Mr. Barlow?

A Yes, yes.

Q6 What did you explain to him?

A That, actually, once we had given him the information it was a matter of record for him, that it couldn't be changed in any way whatsoever, it was his property, but we felt that we

could keep the names ourselves and we just wanted the names, and that was the end of it.

We wanted to feel that we could keep these names and bank them again for researching them again to find out moving and so forth and so on.

Q1 Oh, it was not the intention that you were to be free to sell the ex dates to someone else?

A We claimed, and we did claim in our proposal, that we would sell it to two companies, and this would be a bound contract if we stated this, and if they did purchase, it would be sold only to two companies.

Q2 And after the name reverted back to you, as you said, it would not be again sold for ex date purposes?

A I did not make any claim that it would be sold again.

Q3 What were your intentions in that regard?

A We wanted the -- all the information so that we could again research the program. In other words, a family -- if we gave Mr. Channing Barlow in The Hartford Group Mr. Joe Smith's name, let us say, from the Philadelphia area, it doesn't mean that Mr. -- his status, Mr. Smith's status, would be exactly the same two years from now. He may acquire another automobile at a different time. Therefore, we wanted to have at all times all the names which would belong to us after thirty days after

the expiration date.

Q1 What would you use them for?

A To research them again.

Q2 You mean interview them again?

A Yes..

Q3 Now, at the outset of the meeting, you have told us Mr. Barlow wanted to know whether, if he wanted to have this program, he could be assured of having it, and you said there were certain conditions that would have to be met?

A That is correct.

Q4 Did you tell him what those conditions were?

A Yes.

Q5 Are they all set out in Mr. Wallach's letter, Exhibit 14, or did you mention any to Mr. Barlow that are not in that letter?

A I would believe that they're all in this letter, if you give me a chance to review it again.

Q6 Yes. I want to be sure about this, Mr. D'Arpa, so take your time, and let us know if there are any others.

A I can't see anything in here, Mr. Piel, that I did not explain to Mr. Barlow.

Q7 Everything that you explained to Mr. Barlow is adequately reflected in that letter dated May 9?

A I believe so.

Q1 All right. And you have given us your best recollection, everything of any substance that was said by Mr. Barlow or Mr. Cagney or Mr. Gilmore, have you?

A Yes.

Q2 Did you read the complaint in this action that was filed in the name of Romac Resources as plaintiff?

A Yes, I read it.

Q3 Paragraph 11 says, "All the defendants manifested a serious interest in the plaintiff's list of names and ex dates and in the acquisition of such lists of names and ex dates." I take it that if the Hartford Group manifested a serious interest, that manifestation was in the shape and form of what you have told us about in this meeting and telephone call, is that right?

A It would have to be.

Q4 Because there isn't anything else, right?

A Well, I wouldn't say, Mr. Piel, that there wasn't anything else. They were certainly -- when you say interest, I don't know what direction the interest was, for or against.

Q5 Oh. So "serious interest" meant that they weren't joking, they were serious one way or the other, is that it?

A That is correct.

A I can't recall specifically. However, here again I believe that the situation was that they could not cover the entire market.

Q1 The Insurance Company of North America?

A He may have given me the wrong answer, but that is what I believe he gave me.

Q2 Too small?.

A Not too small, but he could not be able to cover the entire area.

Q3 And if an insurance company was not able to cover the entire United States, why, then, in your opinion that was a excuse or reason for them not taking the ex dates; is that right?

A Not necessarily. There are many companies.

Q4 That is what you said as to the company?

A Well, if they told me that they could not use the program because they could not employ it in their sales field, that would be an excellent reason not to accept it or to further investigate it.

Q5 Now, on May 4, 1962 your affidavit notes that you were in touch with Mr. Parnell of The Kemper Insurance Company. Do you have any recollection of that conversation?

A Would you repeat that question, sir?

(the pending question was read.)

thinking about.

A Well, just give me a moment and I will.

Q1 You cannot tell me what they are thinking about.

We will conclude what they were thinking about by what was said. What was said, give us the conversation.

A Give me a moment to refresh my recollection.

Q2 Surely, take all the time you want.

A Mr. Nash and Mr. Coakley told us at that time that they had a little problem relative to the fact that they were starting to put in certain areas direct writers themselves and they told us they would like to work out a way in which they could offer this to the offices that they were thinking of opening up at that time without bringing the anger of the agency men that they had working for Travelers.

By saying they had one.

They told us they would certainly like to employ the X Dates for it would be a very unique way of starting these independent offices. Basically, the conversation -- I can't remember word for word, I am just picking out the things that stand out in my mind, was that they were going to discuss this further.

Q3 The date of that meeting was what?

A I believe it was April 18th.

A I had an appointment with Mr. Nash on April 18th at 11:00 a.m.

Q1 Did you see him on that date?

A I believe I did.

Q2 What took place at that date?

A Mr. Nash was present, Mr. Wallach, and I believe that Mr. Coakley was also present at that meeting.

Q3 Where was the meeting held?

A At their executive offices here in Hartford.

Q4 Tell us what took place.

A We explained the entire program to them. I say Mr. Wallach and myself, and they listened very attentively. Mr. Nash did. I remember that we had lunch together that day, the four of us. I can't recall the exact restaurant but it was here in Hartford, and we then returned to their office and we again discussed the complete X Date program.

One of the things that Mr. Nash and Mr. Coakley were thinking about during the entire discussion of the X Date program --

Q5 I am not asking what they were thinking about. What was said?

A I'm going to tell you that.

Q6 You tell me what was said and not what they were

Q1 Exhibit 55 contains the proposition that you submitted to Mr. Coakley of The Travelers Insurance Company relating to the sale of X Dates to The Travelers Insurance Company, that is correct, is it not?

A That's correct.

Q2 And the letter of May 18, 1962, Exhibit 56, is a rejection of the proposition for the reasons stated in that letter, isn't that right?

A Yes, it's a rejection of my proposal to him.

Q3 For the reasons stated in the letter?

A That is correct.

Q4 Do you remember the statement contained in that letter, "Because of The Travelers commitment to the independent system of agency representation (that is, the ownership of expirations by the agent himself) we cannot at the present time agree to be responsible as a company for the purchase of this information. Any guaranty to pay for the acquisition of this information with company funds would put us in a discriminatory position as far as relationships with our existing agents as well as our new agents are concerned." You remember that?

A Yes.

Q5 The Travelers Insurance Company had a perfect

right to reject your proposition, did it not?

A Certainly.

Q1 There was nothing wrong in what the Travelers Insurance Company did by rejecting your proposition, your offer?

A In the way he stated it in the letter, nothing wrong with it the way he stated it in the letter.

Q2 And the reasons that he stated are logical reasons, he had agents or they had agents in the field that they did not want to in any way interfere with, isn't that true?

A That's what he said in there.

Q3 I want to show you a letter dated July 5, 1962 on The Travelers stationery, and ask you if you are acquainted with the contents of this letter.

A Yes, I am.

Q4 These contents were called to your attention?

A That's correct.

MR. GOLDSTEIN: I offer this.

(Defendants' Exhibit 57 for Identification
Letter dated July 5, 1962 from L. F. Crossley
entitled "Expirations For Sale.")

MR. KARP: I would like to put on the reco

that true, isn't that what you just testified to?

MR. KARP: I object to the question. You can answer.

A I said they have a perfect right not to buy anything or to reject anything. They certainly have. *

Q1 You are acquainted with the contents of this complaint that was served upon The Travelers Insurance Company, and among the defendants Travelers is one, and you stated in V under Violation, "The defendants engaged in a combination and conspiracy in the unreasonable restraint of the aforesaid trade and commerce among the several states."

What did The Travelers do, name anything, any act that The Travelers did in the combination and conspiracy in the unreasonable restraint of trade, what did The Travelers do to your knowledge? I am talking what you actually know yourself and not by surmise or guess.

A I understand your question. I think this letter that Travelers circulated here to its agents, individual and independent agents, did not help our program or the sale of our program. There is no reason in the world to think that possibly we may not have undertaken a program of selling direct to the independent agents.

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Q1 You do not mean to claim, do you, Mr. D'Arpa, with your wealth of experience that The Travelers Insurance Company had no right to send out this letter of July 5th to the agents?

A I didn't say they didn't have any right to.

Q2 Have they a right to?

A They have a right to do anything they want as far as publicizing their thoughts or a letter of this type. They can do anything they want.

Q3 The act of sending out that letter, one of the things you predicated your conclusion upon, that the Travelers Insurance Company in the combination and conspiracy in the unreasonable restraint of trade, that was one of the acts that they committed?

A Personally, this is my thought on this, sir.

Q4 Your thought?

A Yes.

Q5 You are an interested party?

A Yes.

Q6 And you are after money here, your company is, isn't it?

A Let's put it a different way. We are after due compensation.

Q1 From whom, where --

A That to me is similar to a press release.

Q2 Is that a press release to its agents?

A To all the producers, and there may be thousands involved in that.

Q3 You tell me what act of The Travelers Insurance Company that it performed in attempting to eliminate and suppress competition among all of the insurance companies?

A The only knowledge that I have at my disposal would be reference to this particular letter.

Q4 That is all, is it not?

A From what I know at the present time.

Q5 Upon that you base this suit, is that right?

A Yes, it was.

Q6 Then we come down to (b) where you allege in this complaint that they, "insulate themselves from the competition, envisaged and anticipated as a consequence of the free and unimpeded sale by Plaintiff of said lists of names and X Dates."

What did The Travelers Insurance Company do as set forth in (b) in insulating itself and so forth from the competition, what did it do?

A I think in warning their producers that there was

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this terrible program being developed on a national basis whereby the names of all their insured would be made available --

MR. GOLDSTEIN: I move that the answer be stricken.

Q1 What did The Travelers Insurance Company do? Tell us that, Mr. D'Arpa, and let us not spar.

A To my knowledge they circulated this particular letter.

Q2 Again you come back to the same letter. That's it?

A That is correct.

Q3 And again you predicated your conclusion about insulating themselves from competition envisaged and anticipated as a consequence of the free and unimpeded sale by plaintiff of said lists of names and X Dates upon this letter, Exhibit 57, is that right?

A That's right.

Q4 Let us get to the next one. You have got a lot of allegations in here, Mr. D'Arpa.

"(c) Restrain the Plaintiff from marketing, selling and otherwise dealing in such lists of names and X Dates or profitably circulating them in any manner which

also
by cto

would increase competition among the Defendants generally and to suppress and prevent any trade or commerce in such lists of names and X Dates in the State of Connecticut or elsewhere in the United States."

Do you again predicate your conclusion on this letter, yes or no?

A Yes.

Q1 And that is all, isn't it? Your answer was yes?

A That I know of.

Q2 I'm only talking to you and nobody else.

A That's correct.

Q3 Paragraph 24. "In pursuance of such unlawful combination and conspiracy and in furtherance thereof, the Defendants arbitrarily, intentionally, unreasonably and wrongfully:

"(a) Refused to deal with or otherwise transact business with the Plaintiff" -- they had a perfect right not to transact business with you, didn't you say that?

A Certainly.

Q4 (Continuing) -- "and boycotted, coerced, and intimidated the Plaintiff even though the purchase of lists and X Dates was to their individual self-interest and business advantage."

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In what manner did The Travelers Insurance Company coerce and intimidate you or your company, tell me that please?

A I don't have any definite evidence at this time. The only thing I can refer to is the letter.

Q1 That's all again, this letter, Exhibit 57, and nothing more, right?

A That is correct.

Q2 Now, you got another one here. You have plenty of allegations here but no foundation except this letter so far.

"(b) Made, issued and circulated and caused to be made, issued and circulated injurious statements concerning the Plaintiff in the insurance trade in the State of Connecticut and elsewhere throughout the United States."

Upon what do you predicate that conclusion? Tell me. Is that the same thing, the same letter?

A I believe that if you gave me enough time I could bring out some press releases where Travelers is mentioned also.

Q3 You have had plenty of time, you have been on the stand here for three days. Haven't you had enough time to think about this complaint that was drafted and served upon

my poor client?

A With fourteen people screaming at me and asking me questions of what happened six years ago, I have to refer to notes.

Q1 You lived with this case?

A Yes, but I am not a human Univac. I can't remember everything.

Q2 Let me put it again to you and maybe this will help you a little bit. All these poor clients put to the expense for nothing in my opinion.

MR. JULIANELLE: I move that be stricken.

MR. GOLDSTEIN: Let the just pass on it when he comes to it.

BY MR. GOLDSTEIN:

Q3 What did The Travelers Insurance Company circulate, what injurious statement, tell me, Mr. D'Arpa? You have lived with this case.

A The only one that I can pinpoint at this time is the particular letter that you have marked.

Q4 57?

A You have marked in evidence, however, again, I say to you that if you give --

Q5 You answered the question. You said the only

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thing you can pinpoint --

A And possibly other press releases.

Q1 What other press releases were there?

A Mentioning Travelers?

Q2 Yes.

A There could be some in here.

Q3 Will you produce one the next time you come here and search all through your records -- maybe you have them now -- issued by The Travelers. Have you made a note of it?

A Yes, I did.

Q4 "(c) Caused and instigated numerous injurious rumors concerning the Plaintiff to be widely circulated in the insurance trade."

What rumors did The Travelers Insurance Company circulate, injurious rumors about your company?

A It might refer to the press releases and that letter.

Q5 But you know of no press releases right off hand, do you?

A Not right off hand. I can't pinpoint them.

Q6 Is it true that you predicated your conclusion again on the contents of Exhibit 57?

A Or what may have transpired without my knowledge.

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Q1 I'm asking you about your own knowledge and not what may have transpired without your knowledge. Your own knowledge I am asking you about.

A No, no one ever told me that.

Q2 "(d) Caused, directly and indirectly, the issuance of adverse publicity injurious to the Plaintiff's business."

What data have you got on that, tell us.

A I refer to press releases and that letter.

Q3 You have been referring to press releases and you know of none right this minute, do you?

A Right at this minute, but if you give me time I will search and if I have them I will produce them. If I don't have them I won't produce them.

Q4 Didn't you come here prepared to prove some allegations against The Travelers Insurance Company? Do you mean to tell me you know of no press releases at this moment?

A I happen to have all my press releases in one folder.

Q5 Are there any in there now?

A There could be.

Q6 Go look. You searched, Mr. D'Arpa, for press releases through your files, for any press releases issued by The Travelers and you found none, is that correct?

A Not in my possession.

Q1 And you will search for any press releases so you will be ready to answer when we convene again?

A Yes.

Q2 What acts, of the Travelers with the other defendants in your opinion constituted the elimination, suppression and restraint of competition in the sale of your product, was that predicated on that letter again, Exhibit 57?

A As far as I know.

Q3 Did anybody of The Travelers ever talk with other companies in an effort to boycott your company?

A I don't know.

Q4 So you have no knowledge, would you say it that way?

A I have no knowledge.

Q5 Mr. Coakley expressed the same thing in Defendant's Exhibit 56 as he did in 57, is that not true? Read it, Mr. D'Arpa, please. Take your time and read both.

A With a slight variation.

Q6 What is the variation?

A The variation that I interpret personally, and the variation is this, that he states here that, first of

companies that I had scheduled to contact or did contact.

Q1 How many companies did you contact?

A I would say about 30 of them.

Q2 You were asked in The Aetna interrogatories what companies were contacted, were you not, and you swore to an answer, did you not?

A Yes.

Q3 And the answer you filed is a true statement, is it not?

A Yes.

Q4 And did you list the seven defendants plus six other insurance companies?

A Yes.

Q5 And how many insurance companies did you contact in '62?

A I would say there were approximately 30.

MR. KENNY: This would be a good time for recess.

(A recess was taken.)

BY MR. KENNY:

Q6 Mr. Witness, we have had a fifteen minute recess, and will you kindly give me the names of all the insurance companies that you contacted in 1962.

A I have with me a list that I will read off of approx-

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to confuse you, but you did testify, and so that you will recall it, let me read to you this, where I asked you --

MR. JULIANELLE: What page?

MR. DIXON: 153.

Q1 I asked you, "You made it clear to Mr. VanGils and Mr. Ellis on that date" -- this is the July 10th date -- "that The Aetna, if it chose to go along, would be expected to absorb your entire output of -X Dates," and your answer was, "That is correct."

A That is correct.

Q2 As a matter of fact, it was on that date, was it not, that you indicated to The Aetna for the first time, or to a representative, the number of X Dates that you felt your organization was capable of producing?

A I believe so.

Q3 It was several million?

A That is correct.

Q4 I asked you then, and going on, "What else do you recall, if anything, about the conversation?" Your answer was, "Here again, of course, there was reference made to the opposition that seemed to have been building up at that time, and Bill more or less discounted this opposition because he felt it was just talk, and, 'like any new product,' I remember he

the allegation that The Aetna engaged in a combination and conspiracy in the unreasonable restraint of trade and commerce?

A None other than what I have said before. Not at this time.

Q1 Let us get to it right away. What information do you have about it?

A From conversation and articles --

Q2 I am limiting this to The Aetna. What evidence do you have or information do you have that The Aetna entered into a combination and conspiracy in restraint of trade? Do you have any?

A Only the fact that they were interested and then they refused to buy it.

Q3 That is the sum and essence and all the information that you have on that point, is that correct?

A All that I have at this time.

Q4 Is there any other person to your knowledge who has any further information along that line?

A Not that I would personally know.

Q5 You have discussed this at length with Mr. Wallach?

A Yes.

Q6 He has no information on the basis of what he has told you, does he?

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A Not up until the last time that I spoke to him but I haven't spoken to him for two days now.

Q1 I will read the entire paragraph. Do you have any information now to support the allegation insofar as Aetna is concerned only, that there was an agreement and concert of action among the defendants to arbitrarily, wrongfully, and unreasonably eliminate and suppress competition among themselves through an unlawful boycott of the plaintiff?

A None that has come to my knowledge at this time.

Q2 Or that there was such an agreement and concert of action to insulate themselves from the competition envisaged and anticipated as a result of the free and unimpeded sale by plaintiff of said lists of names and X Dates?

A None that I have at this time.

Q3 You have read Paragraphs 22 and 23 in which allegations of combinations and conspiracy are alleged, is that true?

A I can't recall word for word.

Q4 Just so we get it on the record, would you read Paragraphs 22, 23 and 24 of the complaint brought by Romac Resources and then I will put a question to you.

A All right.

Q5 My question is, with reference to the allegations contained in 22, 23 and 24, do you yourself at this time have

EXCERPTS FROM TESTIMONY OF
MAX WALLACH

Q1 Incidentally, you have been in a sales business all your life, haven't you?

A Virtually, yes.

Q2 And there have been other occasions when enthusiasm has been shown and then when analysis of the situation developed your offer had been rejected?

A Not when it's done by so many independent forces at the same time under such unusual circumstances.

Q3 Incidentally, the services of Modern Home Institute that they were engaged in certainly prior to 1961 were for various other companies too, were they not?

A Yes.

Q4 Like oil companies and appliance companies and they were very enthusiastic at one time about the services that Modern Home Institute could provide for them, were they not?

A No. If they were more enthusiastic they would be customers.

Q5 I am showing you a copy of Defendants' Exhibit 76 and ask you whether or not that is not a memorandum that was prepared by Mr. D'Arpa and submitted to you.

A I believe so.

Q6 Was it not called to your attention that other companies showed great interest in other companies than insurance

companies in the services that were contemplated by Modern Home Institute?

A There was an interest. There was an interest, a definite interest.

Q1 In any event, they did not go through with it, isn't that true?

A They did not go through but they did not go to the extent that the insurance companies had gone in making tests that worked out according to expectations.

Q2 Are you telling me that no tests were performed by companies other than insurance companies of your service?

A I am not telling you that. I am saying tests were made.

Q3 Incidentally, tests that were performed by The Aetna included the purchase of 100 names in one area in the country, is that not true?

A I don't know if that's true. I would have to check the records.

Q4 I want to ask you another question about the complaint. Paragraph 23 alleges against each of the companies named that the aforesaid combination and conspiracy has consisted of an agreement among the defendants. I am reading just part of that allegation. Do you have any information of an agreement that

A Went back to New York and Mr. Ellis presumably went back to his office.

Q1 Approximately what length of time did you spend with Mr. Ellis?

A I would say about two and a half, three hours. It was a long lunch in which we had a lot of discussion.

Q2 Did you make any memorandum of what was said at that luncheon?

A I can recall many of the things that transpired at that luncheon. I don't make memorandums. It is not my pattern. Mr. D'Arpa does keep good records.

Q3 It is fair to say that you do not have any memos that you made of this meeting or the subsequent meeting on July 10th?

A Personally I have no memoranda.

Q4 Will you tell us what was said and discussed, using the words that were used, if you can, at this time, at that meeting in early July.

A Mr. Ellis told us that there was a great deal of enthusiasm about the X Dates and there were a great many re-sistances to the X Dates that were mounting. He also during that meeting made some statements informally that were a little bit surprising. He mentioned some of the anecdotes of the in-

insurance industry, and there was one statement he made that we were rather surprised of, and he stated that most of the executives of the various companies met informally and rather frequently as members of an industry do and he also made the statement that one of the executives, one of the vice-presidents of State Farms was in visiting one of their executive officers, at which there was some discussion about the pirating of salesmen. I particularly was surprised because I was under the impression that competitors didn't fraternize, as apparently they did.

He also made mention of the fact that there was a lot of resistance building up against our program on the part of some of the insurance companies. He was not specific but he made implications, and the reason for the resistance in his terms were they were rather short-sighted. They were busy trying to protect something that wasn't protectable by him.

I asked him to explain that and he quoted from his letter, his bulletin which was a very eloquent one which he issued to all his sales managers, something to the effect that the independent agents were busy locking interior doors while they were leaving exterior doors wide open, and apparently the interpretation of that was very simply that while it was a known fact that the insurance companies were using X Dates

the purchase of these shares?

A I did not.

Q1 Did the then owners of the shares contact you individually or did they act through someone else?

A These people sent their stock in to me. Mr. Kimelman, who was handling our books at the time, wanted me -- asked if I would buy these shares back, as a lot of these people wanted to take a tax loss because the company was floundering. Most of these people sold only a part of their stock and they kept a part of it, which the stock book would confirm having been recorded.

Q2 Do I take it then that you made no --

A I made the direct purchase but I made no solicitation and I only did it as a courtesy.

Q3 The stock transfer book would, of course, reflect the actual dates of purchase by you, but it is my present understanding that there were purchases by you in November and December of 1961 and further purchases in February and possibly March -- I believe February of 1962. Does that information square generally with your present recollection?

A I can't recall the exact dates but I believe there were transactions that did take place at that approximate time.

Q4 When you bought these shares of stock about which we

have been talking you were the chairman of the board of directors of Modern Home and the president and chief executive officer of Modern Home and you were also the largest individual shareholder of Modern Home, is that correct?

A That's correct.

Q1 By any definition of the term, you would have been considered an insider?

A Are you asking me that question?

MR. JULIANELLE: I will object to that. What is the definition of insider? His definition may be different than yours.

Q2 What is your definition of insider?

A I have no definition of insider. I would like to know what yours is so I can answer the question.

Q3 All right. You were one who was intimately connected with the corporation and were well aware of the activities, present and future, of the corporation, is that correct?

A That is correct.

Q4 And you, of course, had access to information regarding Modern Home which these purchasers did not, is that correct?

A Yes, but I gave that information to Mr. Kimelman.

Q5 Were there any shareholder meetings after these persons purchased their shares?

A No.

Q1 Were there any reports or other statements which were issued to these shareholders?

A No.

Q2 So that any information they had was initiated originally from you, is that correct?

A Correct.

Q3 I take it that in light of all these facts and your position in the company, that you felt you had an obligation to be completely frank and honest to these investors, is that correct?

A Correct.

Q4 And that would be particularly so since they would be losing ninety-nine cents on each dollar they had invested in the company?

A Correct.

Q5 Your father Philip Wallach purchased some shares in the January of 1960 sale, did he not?

A He did.

Q6 He also sold some of his shares to you I believe in November of '61 or around that time, is that correct?

A I believe so.

Q7 Now, you would, of course, want to be completely fair

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with your own father and pay him a price commensurate with the then worth of Modern Home, is that correct?

A Yes.

Q1 That would of course take into account not only the present situation in Modern Home but your future prospects as well, is that correct?

A Correct.

Q2 You also paid your father one cent for each share of stock, is that correct?

A That's right. I treated him as I would treat everybody else.

Q3 You, of course, felt you were completely honest with him and with everyone else?

A Yes, I was. He wanted a tax loss and he was entitled to take it.

Q4 In paying your father and in paying the other shareholders one cent a share, I take it that you felt they were receiving what their stock in Modern Home was then worth, considering the present situation and any future situation, is that correct?

A I don't think it can be interpreted that way.

Q5 I'm asking you whether you felt you were paying them a fair price for the shares which you purchased.

A I felt that they had a right to sell their stock at a tax loss, if that's what they preferred after knowing the facts.

MR. REYNOLDS: I would ask that the question be read again.

(The question referred to was read.)

A That's a devious question.

MR. REYNOLDS: I move that that be stricken and I ask that you please answer the question, Mr. Wallach.

A Yes.

Q1 What, if anything, did you tell these individuals from whom you were purchasing the shares?

A I didn't see these individuals. I told Mr. Kimelman who represented the individuals that we had great prospects, that we felt we had a great promotion program for the insurance companies which would be fulfilled within the year. At the same time a lot of these people having seen the -- these people made their own judgments.

Q2 Would it be fair to say then to the best of your knowledge whatever these shareholders were told at the time they sold the shares to you, it came from you perhaps through Mr. Kimelman?

A Yes.

Q3 Did you through Mr. Kimelman tell them about the Cleve-

67a

land operation?

A Yes.

Q1 Did you tell them about the X Date program?

A Yes.

MR. REYNOLDS: I have no further questions but I do reserve my right as have Mr. Kenny, Mr. Iannotti, and the other counsel.

MR. KARP: I believe that concludes everybody except our cross-examination. We were caught short because we believed you would have gone longer today based upon the manner in which the deposition was conducted at the last hearing.

I, therefore, would like to hold the cross-examination by us which would only consist at this time I believe of four or five questions just before we take on Robert Wallach. We are taking Robert, as I discussed with most of you, out of order. Mr. Gair is in his tax season and is just not available right now. Mr. Wallach tried to reach his son today. He is in New York and cannot reach him right now.

I think that we should set up a day certain.

(Whereupon, the witness was excused, and the taking of the deposition was adjourned at 11:30 a.m.)

EXCERPTS FROM TESTIMONY OF
HENRY GAIR

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*Excerpts from testimony
of Gair*

3047

Q1 So it would be fair to state that as of the beginning of Fiscal '61, Modern had no initial capital investment remaining?

A Yes. May I see that tax return once again, please?
Thank you.

MR. REYNOLDS: I have no further questions,
reserving my rights to --

MR. KARP: Yes.

(Whereupon, the taking of the deposition was
adjourned at 4:03 p.m.)

A What do you mean by much of a job?

Q1 Did it require much work?

A Whatever was required I did.

Q2 I am asking you if you recall how much time it required?

A Whatever time it required, it required.

Q3 But you don't know?

A I can't remember offhand, no.

Q4 How were things going for Modern Home Institute in 1961?

A From what date on?

Q5 About the middle of July.

A I don't think they were going too good.

Q6 As a matter of fact, showing you Defendant's Exhibit 124 for identification, I ask you how many employees Modern Home Institute had as of payday July 28, 1961?

A Three.

Q7 The next week how many did they have?

A Three.

Q8 And the next week?

A One.

Q9 And the following week?

A One.

Q1 And the week after that?

A One.

Q2 And the week after that?

A None.

Q3 And then there were none until December 31st, 1961,
correct?

A I don't see any.

Q4 You were keeping the books then, weren't you?

A They aren't here. Had no employees.

MR. JULIANELLE: It's 4:10, I suggest we
adjourn. It takes the witness two hours to get
home.

MR. KENNY: Why don't we go on for a few more
questions.

MR. JULIANELLE: Okay.

Q5 Now, traveling expenses, did you check with the
individuals who travelled?

A I checked with Mr. Wallach.

Q6 You checked with Mr. Wallach?

A Yes, sir.

Q7 Nobody else?

A That's it.

Q8 You don't know whether Mr. Wallach was ever in

EXCERPTS FROM TESTIMONY OF

H. D. VAN GILS

13a

Excerpts from testimony
of Van Gils

3271

of business developed was minimal. I don't remember the number, but it was small, as I recall it. We didn't find -- we found that those agents, where used, were in the majority not interested in buying them at anything like the price that was discussed. That in a general way was the result.

Q1 Did you ever determine whether the agents would be interested in buying them at any price?

A At any price? I don't know that we did.

Q2 Did you tell me you stated that you thought the results of the test showed that the accuracy was good but that the amount of business it produced was minimal? Do you have any personal figure that you recall on the amount of business?

A No.

Q3 Would you tell me out of 100 leads or X Dates what you would consider a good business-producing percentage?

A I don't think we have a standard that I could name for that.

Q4 Did you at that time?

A No.

Q5 You stated that the business-producing results were minimal. Now, in order to state that, I would assume that you would have some standard in mind, am I correct?

A Well, we have to relate it to the cost and to other

A You are speaking now of the Pelham meeting?

Q1 Yes.

A You are asking me now whether the test was the sole reason we didn't go into it?

Q2 Yes.

A No, it was not.

Q3 Would you state the other reasons?

A There were a number. The price, the cost, was one thing. That related to the quantity that had been suggested, had been mentioned, these millions. We were of the opinion that we could not -- this was based upon both the test and the R. L. Polk experience that I mentioned to you earlier.

We felt that we could not utilize that many and get that many agents to subscribe to the program. We were of the opinion that our agents even having the leads in hand, perhaps even to the extent free of charge -- not that we ever consider doing it free of charge -- but if we were to see fit to give them these leads free of charge, we were not persuaded that they would follow them up as diligently as they might.

We contemplated on the expense that would result from our having to cull these lists of present insurers, send out leads on people we were already insuring. Those were all the reasons.

*Excerpts from testimony
of Van Gils
3276*

Q1 Do you know who would know?

A I have to go to the individual branch officer who supervised this. We might have some records in Hartford on it.

Q2 Who would be in charge of this?

A At that time when we were doing this in the Auto-Rite field, this was Mr. Bryan that I mentioned earlier, who died. The records would still be there if we have records of it. I am sure we did some checking on efficiency of this kind of an approach, yes.

Q3 Did you make any written memoranda or reports of this meeting in July at Pelham?

A The only record, written record, I have is an expense account for driving down and back.

Q4 You made no reports at all, whatever, concerning this?

A No, I did not.

Q5 Did you send out any letters?

A Yes. A letter went to our field, to our own managers, our own branch office managers. I am not certain, I think that letter -- I guess that was Mr. Ellis' letter. I think he signed the letter. I am not positive whether he signed it or I did. A letter went to our branch offices after that meeting telling them of our decision.

Q6 Within a week, would you say?

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A Probably within a week or that range of time. I am not positive of the date.

Q1 Other than that, there is no writing that you know of pertaining to that conference?

A That's right.

Q2 Now, you indicated before that you informed Mr. Mann about the conference?

A Yes.

Q3 Could you tell me what you told him?

A I saw Mr. Mann regularly since he was my supervisor and reported to him orally most of the time on most things. I'm not at all certain of the extent of my report to him on this subject. I am very sure that I told him on one of these regular meetings with him about this meeting along with perhaps other things that were current at the time, and I have no doubt that I told him of our decision.

Q4 When was your decision made?

A When was it made? Rather conclusively made on our way back from Pellham.

Q5 Did Mr. Ellis acquiesce in this decision?

A Yes.

Q6 In other words, it was a joint decision?

A Yes.

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Q1 You didn't say, "Well, I don't think we should take it," and then Mr. Ellis agreed with you as his superior?

A That's not Mr. Ellis' disposition, but I am not sure how I started or how our conversation started. I am sure we talked it over on our way back and mutually arrived at a decision not to go.

Q2 Can you tell me everything that you recollect about the conversation on your way back, what you said and what Mr. Ellis said?

A I recall that we discussed at some length the quantity involved, conjectured over the feasibility of using that quantity. I am sure that we talked about the total expense of it.

Q3 Pardon me?

A The total expense of it. I am sure we talked about the -- I am sure -- I am reasonably sure that we talked about the possibility of agents sharing a major part of the cost. I am sure we talked about the experience we had on the R. L. Polk lists where we found that the leads, the names, were not totally, systematically and alike followed up by all agents, that there was waste in it.

We probably talked about the work load that would be involved in checking these leads against our present insurers.

Q1 How long would it take to have that information?

A I could get it by -- I could get it within a matter of a day back at the office, get the budget figures out.

MR. JULIANELLE: Off the record.

(Discussion off the record.)

Q2 Mr. VanGiles, you indicated before that the X Dates that you tested, I believe you mentioned there were approximately 100?

A I think that is the number. I am not positive of that.

Q3 Produced minimal business. I would like to get back to that for a minute. What is your definition of minimal business?

A I have no definition for it. I would generally apply. I say that -- we have to look at these results in the total concept and not in a general way. We have to relate it to the other factors, the costs and the work involved and so on.

Q4 In your training programs, do you have or did you have at that time any reports of business production by agents from sales leads that they had?

A We had it -- we had some reports from some agents, not from all by any manner of means. You must understand that these agents are not employees of our company, so we can't demand reports from them in the entirety at all.

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of business and what have you.

Q1 What programs did you compare these tests to?

In other words, when you took this test program, this program to test, what other programs did you compare it to?

A The only other one that we had which was at all like it was the R. L. Polk list, but not entirely like it.

Q2 How did it compare with that program?

A Expense-wise it was more expensive and it was -- the R. L. Polk undertaking that we had was on the basis of agents ordering it. They shared in the cost and they -- only those who wanted to participate in it entered into it. We didn't first acquire the lists and then impose on the agents or get them to buy it. It was just a direct mail letter that would go. It was not in the sense that this Romac program was an X Dating venture. So it didn't really -- it was not similar in too many respects, but it was the closest thing we had.

Q3 How did it compare in business production?

A I don't really know. I don't really know, because we just didn't have -- we have no way, really, of checking on what results a given agency gets on a given effort. They are not employees, and we can't demand detailed reports from them. We had some that -- we had some that were enthusiastic about the Polk list and reordered additional mailing lists, and so

A Yes.

Q1 And the Polk program was the only program that the Romac X Date program was compared to?

A It wasn't really compared to that.

Q2 I understood that you answered before that this was the closest program that you had to it, and this was --

A I think -- I said I didn't think there were many points of similarity, that it was the closest, and thus could not be precisely compared.

Q3 I am a little confused, and maybe you can clear it up. If you had nothing that you could compare the Romac X Date program to, what standard did you use in determining that the Romac X Date program was too expensive?

A This presumes that we had a standard. I think it was a judgment.

Q4 What was your judgment based on?

A I have mentioned those factors. The cost, our inability to handle as many as we were -- to be expected to handle, the difficulty of sorting out those that were already our customers.

Q5 Was there a primary factor?

A No, I don't think so. They were all considerations.

Q6 You mentioned cost. By cost do you mean the cost per name or the cost to your company of the total program?

A I don't know how I would separate those. One leads

to the other.

Q1 There were no determinations then as to whether it was just the 45 cents per name or the four or five million dollars a year it might cost your company to acquire the whole program?

A The cost per lead we felt was -- was an impediment to get agency participation in the program to any appreciable extent. The aggregate cost was a large figure and major consideration, so both bore on the decision.

Q2 Directing our attention for the moment on the cost per lead and the attractiveness to the agent, did you have any figures at that time as to what it cost individual agents to acquire X Dates per name?

A No.

Q3 Did you have any communications from the agents as to what they would consider a reasonable cost per name for X Dates?

A No.

Q4 Then --

A Not to the best of my knowledge.

Q5 How did you know that it wouldn't be attractive to the agents?

A It is called a judgment, if you wish. The little -- the testing we took in Newark was another factor to influence

judgment, as you might say.

Q1 You never inquired specifically of the agents whether they would be interested?

A We did in that Newark experiment.

Q2 What was the consensus, do you recall?

A The consensus was they would not.

Q3 At the 45 cents a name?

A 40 cents I think was the price we mentioned. I am not positive whether you are right or I am right. It was one of those figures.

Q4 Did you ever inquire of them whether it would be acceptable to them at 20 cents a name?

A I am not certain whether we did. I don't know.

Q5 Do you know of anyone else in the company who would have inquired?

A No, I don't.

Q6 To your knowledge, your company never did inquire?

A As to whether 20 cents would be an acceptable price?

Q7 As to any other price aside from 40 cents.

A I am not sure.

Q8 Whose final or primary decision was it to reject the

X Date program?

A I guess you would say it was mine.

A This was before the decision or --

Q1 At any time from 1961 when the program came out until 1963.

A I have no recollection of a direct specific reaction from one of our own at the Casualty -- Aetna Casualty Insurance agency per se.

Q2 Either for or against the program?

A Not as a directed -- I am not aware. I don't recall any of that nature.

Q3 How about agents in general?

A We were aware of some resistance and some opposition to it in agency ranks from some, some bulletins. It seems to me there were several sent to us from various state associations that heard about it, that were sent to our -- by our branch offices that were picked up; that sort of thing.

Q4 The reaction you indicated was adverse?

A Those would indicate, those bulletins would indicate that those associations' reaction was adverse.

Q5 Did this have any influence on your decision to reject the program?

A Well -- let me say this, it was not an important factor in our decision. We were aware of it. Had the other factors indicated to us that we could successfully and profitably get in

it, it would not have deterred us. It was not a controlling factor at all, no.

Q1 You didn't have any reaction one way or the other from your agents? Would it be safe to say that agency reaction didn't have any real bearing on your decision to reject --

A I think it is fair to say that.

Q2 Did you discuss with Mr. Ellis at all the question of agents' reaction?

A I am sure we must have at one time or another discussed it, sure.

Q3 Do you recall specifically any of these discussions?

A I saw Mr. Ellis daily, I guess, and very few days went by I didn't see him. He kept me informed of his connection with this and his conversations to some extent, not all of them, but some. I couldn't be specific as to the day, time or place at all, but I am very sure that we were aware, and I was aware of reaction, of the purported reaction of agents to this, yes. I am sure that he informed me of such information as he might have had on that score, but I can't be specific.

Q4 At the time you decided to reject this program, did you issue any bulletins to your company or to the agents as to your decision to reject?

A I don't believe we did to our agents. We did to the

A No, sir.

Q1 Not automobile or any other type?

A No, not agents. If you are speaking of our agency organization per se, as I say, they are not employees, and we can't tell them what kind of insurance to sell or who to sell it to. We have not been on a system at all of saying to them, you must produce 120 accident and health policies and 37 other kinds. We don't have that.

Q2 Do you have any records at all or does anybody in your company have any records as to the figures on the goals of insurance that you wanted your -- your company wanted to be sold in any particular --

A I have the records on the aggregate.

Q3 Who would be in charge of those records?

A I have them.

Q4 Present here?

A No.

Q5 At your office?

A Yes.

Q6 Would you also have the records on the percentage of automobile casualty insurance sold in any one year?

A That was written in those years, yes.

Q7 How about the records of total insurance sold by

3325

couple of questions for you, Mr. VanGiles.
plaintiffs' offer to sell the Aetna X Dates,
one employed by or representing the Aetna
Company, or the Aetna Life and Casualty
knowledge, ever have any conferences, correspond-
communications of any kind with anyone
reporting to represent or acting on behalf
insurance company regarding the possible acceptance
the offer of Romac Resources, Inc. or Modern
c., to sell the Aetna X Dates?

Did any other insurance company in the last
course, include the following companies, all of
defendants here: Hartford Accident and Indemnity
Fire Insurance Company, Nationwide Mutual
Nationwide Mutual Fire Insurance Company,
Insurance Company, the Travelers Indemnity Company,
Company, Liberty Mutual Insurance Company,
Insurance Company, State Farm Mutual
State Farm Fire and Casualty Company. Would
last question, which was "No," have been any

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different if I had

A No.

MR.

say "and

THE

BY MR. REYNOLDS:

Q Prior to
Aetna X Dates, did
the Aetna Casualty
Casualty Company,
correspondence, me
representing or pu
Connecticut Associ
Incorporated, rega
of the offer of Ro
sell the Aetna X I

A No.

MR.

(W)

1:05 p.m.

Subscribed and sw
1968.

My Commission Exp

specifically named these companies?

BASSICK: May I add to that question and
/or any one of them"?

WITNESS: The same answer.

rejecting plaintiffs' offer to sell the
you or did anyone employed by or representing
and Surety Company or the Aetna Life and
to your knowledge, ever have any conferences,
etings or communications of any kind with anyone
rporting to represent acting on behalf of the
ation of Independent Insurance Agents,
arding the possible acceptance or rejection
omac Resources, Inc. and Modern Home, Inc. to
Dates?

REYNOLDS: I have nothing further.

hereupon, the deposition was adjourned at
m.)

Deponent

orn to before me this, the _____ day of _____

ires:

Notary Public

EXCERPTS FROM TESTIMONY OF
WILLIAM W. ELLIS

89a .

Q Any graduate work?

A No.

Q When did you graduate from Princeton?

A 1926.

Q Could you briefly give me your business background?

A My first job out of college was with the Aetna Casualty and Surety Company in Hartford, and I was there until March 1st of this year; when I retired.

Q Your present title with the Aetna Company?

A I have none.

Q What was your title with the Aetna Company in June, July and August of 1962?

A Secretary.

Q How long had you been secretary?

A I think it was 19 -- that title was conferred in 1956 or 1957. I am not sure which.

Q What were your duties in 1962 for the Aetna Company as secretary?

A I had two functions. One as an interested officer for a group of our branch offices, all on the West Coast.

Do you want me to describe what that means?

Q Yes.

A Well, it has to do with the production of business.

In each of our branch offices we have an agency or a sales department, and they look to me for guidance, administration in the home office of those sales departments in each of those branches, and I am also the officer in the home office to whom they look upon to give them assistance in all kinds of sales problems, promotional work, also recommended promotions in the sales department and all those branch offices, and authority for making moves of field men from one to another, and so on. That is one function.

The other quite separate one, I was responsible for the sales or production efforts countrywide for the private passenger automobile insurance.

Q Could I ask you for an estimate in 1962 of the amount of time spent on your first function, which, as I understand it, was basically an advisory sales capacity to the branch offices?

A Perhaps on the first one, the interested officer capacity might be 25 to 30 percent of the time.

Q I take it that the rest was spent on your second. So that I clearly understand, when we talk about an Aetna agent, that is an independent agent who sells not only and Aetna policy, but who may sell other policies, is that correct?

A You mean for other companies?

Q Yes.

Q Do you have any knowledge about the cost involved in each of these, starting with the direct mail, the cost for obtaining from the Polk system, the expiration mailings, and so on and so forth?

A The Polk system involved a total cost of 12 cents per name. This covered the cost of the name or the names, at the rate of 12 cents apiece, and it also covered the cost of the letter, the reply card tucked in a slot, and also covered the cost of the Papermate fountain pen to go to each replier who would give us the X Date. That was the whole package. We paid half of that, the Aetna.

Q In other words, 6 cents?

A Yes.

Q When you told me about direct mailings, you told me first about the Polk system and obtaining the list which you just explained further.

A Yes.

Q Then you also said there was the mailing of pieces with a return card. It sounds similar to me. Could you differentiate?

A Similar type of thing, except that this involved no furnishing of names except by the agent himself, and a minor difference, that was not a sales letter, it was a sales folder

containing a reply card, but it is a minor difference.

Q The Polk system, was that in operation in 1960, 1961 and 1962?

A It certainly was in 1961 and 1962. I think it started in 1960, probably.

Q Do you have any idea today how much the Aetna itself spent on the Polk system?

A No, I don't. Those are the records that Mr. Brown and his associates would have.

Q Do you know how wide a scale this Polk system was? Did it pertain just to one area or was it throughout the country?

A Agents in every state where we had Auto-Rite approved participated in it.

Q Did the .2 cents include the postage on the letters that went out?

A Yes. I am quite sure that is true.

Q Do you know how effective it was? Were there any studies or tests made on the effectiveness in the period of 1961 and 1962?

A Mr. Brown conducted -- first of all, may I say that we cannot require -- or felt we could not require our agents to report all of them, to report accurately on results. We know

how many -- we know accurately how many X Dates were sent to them after they were received in our home office. You see, each return card had an agent's code on it, so we knew whose it was and we sent those back to the agent when they came in with an equal number of these little fountain pens.

We know that, but as to the results obtained, we never felt that we were in a position to require agents to report under any system, but Mr. Brown did in one of those years and I think perhaps it might have been 1963 or 1964 he did send a questionnaire. Whether he sent it to all of the agents that participated, I am not sure. I know he sent it to a great many. Obviously, some didn't reply at all, others did, and it went all the way from the very most successful to the very least. There was no -- some of it was very discouraging.

MR. KARP: At this time I would like to request, Mr. Reynolds, any information which you have concerning how much the Aetna itself paid for X Dates -- not X Dates -- I guess it was sales leads under the Polk system.

Q Mr. Ellis, was there any other cost involved in your direct mail system -- withdrawn.

When did you use the Polk system until, or is it still in use today?

than one -- well, for instance, gotten by telephone, because in the Polk plan we had -- they must have read our message. We had a sales presentation in this letter, you see, and the fact that they were going to get the little pen shortly afterwards helps, so we considered that X Date more valuable than the telephone.

We also considered the booth one more valuable in that there was some screening could be done.

Q Just briefly on the Polk system, was this Polk system -- was that a private organization?

A A private corporation.

Q That produced it for you and sold it to you?

A That is the outfit that is the subject for this suit by this aggrieved car license man up in Connecticut somewhere. They get them from Motor Vehicle records.

Q Do you know where they are located? Do you know their proper name?

A R. L. Polk & Company. I think New York, but I wouldn't swear to it.

Q New York City?

A Yes.

Q Do you have any idea as to the expenses incurred by the Aetna as far as the telephone solicitation programs that

have any reports --

A They would appear oftentimes in reports made by our branch managers to the home office. Our branch managers sent an individualized report to the senior vice president every quarter, and I can recall that in that era, in that period, quite frequently the branch manager would comment that agent so and so had a very successful experience running a booth at the Kalamazoo Home Show, and how much it cost and how many X Dates, and so on.

Now, whether or not those -- I would imagine our destruction program would have eliminated most of those managers reports by this time. I can't swear to it.

Q When was your first contact with any employee or officer or otherwise of either of the plaintiffs, Romac Resource and/or Modern Home? I think for purposes of questioning you about Modern and Romac, I will just refer to Romac and I will mean both.

A I believe it was -- I know it was first -- during the first ten days of May. I think it was the 8th of May, without consulting my notes. I couldn't swear to the exact date. I think it was the 8th, however, of May 1962.

Q What happened?

A I will amend that to say that I had a phone call one

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I think he recited RCA as one very valuable customer. I can't swear who else. It seems to me it was somebody in the washing machine business or something like that. And I got the impression, rightly or wrongly, that they had a vast crew of housewives that I understood at the time -- I may have misunderstood, but I understood that they actually visited in these homes door to door.

I got the impression, now, they were phone calls, -- but I had the impression they were actually going in and sitting down and asking a lot of questions about preferences for dishwashers and refrigerators and all of those things, and that at some point they had gotten the notion that while these gals were at it, they could very easily obtain the expiration date of the family automobile insurance, and that they were now equipped to furnish -- no named quantity, but furnish a good man X Dates, and he spent a great deal of time explaining to me what their proposed plan would be, namely, they realized if they were to furnish these to every insurance company in the business they would become worthless, which I agreed.

Therefore, he proposed to sell their list to one so-called direct writer, and the same list to one so-called stock agency insurance company. And he said he was very frank in saying that he intended to talk to several companies in both

trial run, that it would quite probably be that in the final analysis the cost might be in the 40 to 50-cent area.

I hesitated not at all to buy the hundred and he --

Q Excuse me. I don't mean to stop you, but were these offered in this first meeting and did you accept it then?

A Right. This is the first interview, not the phone call, but the first face-to-face interview. So I agreed verbally to buy them, and he said that they had a group in Northern Jersey, and I realized that we had a branch office in Newark, and I had confidence enough in the manager of the agency department there to think he could run a fair test. So we agreed on that.

Shortly afterwards they -- this is getting away from the interview. You don't want that.

He seemed to be very interested in how we did business, what our problems were in this area. I gained the impression that he didn't know too much about it, as you would expect -- about the insurance business or automobile insurance and how it was sold and marketed and so on.

He was so friendly and seemed to be a very fine chap that I told him everything he wanted to know. This went on, as I say, from probably around ten o'clock in the morning on through lunch and possibly a little bit after. That's about

my recollection of that interview.

(Recess was taken.)

BY MR. KARP:

Q That was on May 8th, I believe, your first conference with Robert D-Arpa.

Could you tell me the next contact that you had with anybody from the Romac organization, to your best recollection?

If you have any notes or data that you might wish to use, feel free to do so.

THE WITNESS: Do you want me to look at that chronology?

MR. REYNOLDS: Only if you have difficulty. Answer the question. If you have difficulty, you can refer to the documents.

A Well, I think I had a phone call from D'Arpa saying that he had sent or was sending the 100 to our agency manager in Newark, and the next one after that I think was a letter from him to me stating that he had sent them, and I have the impression that with that letter was an invoice for the \$30.00, which I think I sent back to him either that day or the next day.

Q Do you just want to continue chronologically with your contact with the Romac organization?

A Well, it's pretty difficult for me to give you dates. It wasn't long after that, very shortly after that, that I received a copy of the letter that Hartford had sent out on this subject and whether -- I think I probably sent a copy to D'Arpa to keep him informed of this, and then subsequently, not too long after that, after those letters had become common knowledge in the industry, there began to appear various ratings and the bulletins of these state agency associations, and I usually forwarded a copy of those to D'Arpa.

I think at some point he phoned me in regard to these and possibly to thank me for keeping him informed.

Q Were there any conversations that you had with any other personnel of any other company or agents concerning the Hartford letter?

A None whatsoever.

Q Continue.

A You want the next event?

Q Before we go on to that, when I asked you that, I mean any casual lunch that you might have had with any friend of any other company on a casual or any other basis.

MR. KENNY: Read the question, please.

(The last question was read by the reporter.)

A No.

Q What was your next contact with anybody from the Romac organization and approximately when?

A There may have been a few phone calls with D'Arpa concerning these bulletins, but the next thing I --

Q Do you have any recollection of any phone calls about Hartford at this time?

A With D'Arpa?

Q Yes.

A I vaguely recall that we had at least one about this subject, yes.

Q Do you have any recollection about what was said by D'Arpa or by yourself or both?

A I don't think so. I do remember him being quite grateful about keeping him informed. That's about all I remember. He may have asked why they wrote such a letter, and I said I didn't know. That's about all I recall.

The next one that I really remember was a luncheon in Hartford at the Statler Hilton, involving myself, D'Arpa and Max --

Q Wallach?

A Wallach, yes. I think that was the last one before Mr. VanGils and I went down to Mount Vernon, if my memory

A Well, of course I can't recall the words. I remember distinctly, of course, that both Mr. Wallach and Mr. D'Arpa were quite surprised and somewhat shocked to see this type of writing spring forth, and I think they were very anxious to find out from me what I thought was the reason for it.

As I recall it, I tried to explain to them the philosophy that had been extant in the insurance agency relations over many, many years, customs that might give them some background for this.

Q Could you be more specific about that?

A Of course. Practically every stock agency company has an agency contract or agreement with its agents, not with brokers, but with its agents, and in that contract they agree, the company agrees, that any records pertaining to any of the insurance which this agent has placed with our company shall be not revealed or given to anyone else. That is as far as the contract goes. Many agents have construed this to mean they own the expirations of their insurers.

I explained all this, and then I said, as I would say to anybody, that my own personal opinion is the agent owns them to the extent that the insured will permit him to own them. He is the -- the insured is free to place his insurance

with anybody he pleases. We simply agree as a company not to give John Jones' records of expiration or other records pertaining to this insured to any other person or corporation or agent or what have you; that they shall be a private matter between the company and our agents.

I think I explained that I thought it was a normal tendency for agents to value their renewal list. This is the life blood of an insurance agency, its ability to renew its policies, and anything which threatens this would be somewhat similar to a person on salary with the loss of -- a reduction in salary or -- in other words, a very vital part of their business life.

What I was trying to do was to explain why the heat had risen here a little bit on this subject. And then I think he asked for my opinion about the ethics of this, if you will, or of the propriety of our company or some other purchasing their expiration lists or cards, and I think I told them that while occasionally this might cause some difficulty, that in the over-all large picture, that I thought it was a healthy thing for this segment of the industry to be doing more selling, and in order to do that, they had to have X Dates, and that while I could understand this opposition, I wasn't in agreement with it.

Q In explaining what the history of the custom with

the agents was, did you also discuss the history and custom of the other companies, perhaps more specifically the Hartford Company?

A I wasn't in a position to know much anyway of the two Hartfords, or the Hartford A & I, other than that they operate quite similarly to ours and Travelers, for instance, right in our own town.

Q What else was discussed at this meeting?

A I think by this time that the Commissioner had made some public statements on the subject. I think perhaps we discussed that for a time. I can't be positive, but I do think by this time he had made some public utterances on this subject, which were even more disturbing to Mr. Wallach and Mr. D'Arpa.

Q Was there anything else that was discussed?

A I think perhaps we discussed -- I can't be sure. We may have discussed a preliminary report which I had from the Newark office -- I can't be sure of that, but we may well have.

Q Did you discuss anything else about the program that they were offering to you?

A That they were offering?

Q Yes.

A Yes. As I recall, there wasn't very much discussion about that. At this point, you see, we were still on this trial in this trial period, and I had been clearly given to understand that there was going to be no getting down to contract or agreement to purchase or anything until after this was over and until Romac or Home had explored other markets for their products.

Q Your answer seems to me to be two-fold. The first part --

MR. KARP: Read the last part of the answer --

MR. KENNY: Read it all.

(The portion of the record referred to was read back by the reporter.)

Q There seems to be two parts. You said it was your understanding there would be no contract until, first, after this was over. Are you referring to this being the test that you were presently taking?

A That, and their opportunity to contact other insurance companies who might want to -- whom they might think should have this service. At least that is my impression. I can't swear that -- I don't know that they actually said, "We are still investigating."

It was just an impression that, "We are still in the

considering stage."

Q What do you mean by the second part, on the markets for products?

A I mean that, as was stated in the first interview, that Mr. D'Arpa was very clear in his statement to me that he was not in a position to sell us this until he had talked to a number of other agency stock companies, since he wanted the one that could make -- could use the greatest number. He didn't know whether we were that one or not.

Q Did he indicate any numbers to you?

A No, he did not.

Q At your first or second meeting?

A No, he did not.

Q None at all?

A No.

Q I take it you didn't ask him for any estimate of what they could produce or where they could produce it?

A The only thing he did was to mention different areas where he thought they could supply these X Dates.

Q What areas did he mention, if you have any recollection?

A There was New Jersey. I think we talked about Massachusetts, and I ruled that out because we were not

selling Auto-Rite in Massachusetts, couldn't sell it.

I have a hazy recollection he mentioned Ohio. Whether we talked about Pennsylvania or not, I have a hazy recollection on that, but that may not be so.

That's about it, I think.

Q Are you referring now to places or areas he stated that he could supply X Dates at that time?

A Either then or very soon after, I think, yes.

Q Did he talk about supplying X Dates on a national scale in the future?

A Yes, I think he thought that he might be able to but was very vague about when, and I think he told me that they just didn't have the organization, but they thought they could build one in places where they were not then active.

Q What is your next meeting or contact after you met with Mack Wallach and Robert D'Arpa, the end of June or the beginning of July, the meeting that you had with Mack Wallach and Bob D'Arpa at their office in Pelham, at which Mr. VanGils was present?

A Yes.

MR. KARP: I would like to terminate and pick up in the morning.

(Whereupon, the deposition was adjourned to Tuesday, May 21, 1968, at 10:00 a.m.)

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to exactly what would be expected of each part if we were to go ahead and make some sort of a purchase agreement.

I think we outlined to them some of our problems, because at that time we were pretty well convinced that if we were to go ahead, we would have to clear these X Dates with our own records and in our own branch offices, so that we wouldn't be selling or giving these X Dates of one of our agents to another agent on his own customers.

We discussed that a little bit, then it came down to what would be expected in the numbers that we should take and I am quite sure that is the first time that I fully realized how vast a quantity they expected us to take if we were to go ahead with this thing, and it ended by -- on the note that we would give it some consideration and we would let them know quite soon, because by that time we -- I think we all felt that we discussed this plenty, and we all knew everything there was to know, and it is six years ago, and I can't remember everything, but that's about it.

Q You just stated that you discussed what would be expected of each party. Then you said they expected you to purchase large numbers, and you had no idea that the numbers were this large.

What numbers did they talk in terms of at this

meeting.

A As I recall it, they expected to generate in the neighborhood of 9,000,000 a year. I don't know that this was for every year for the next 20 years, or anything like that, but for several years, and, of course, it didn't take us long to multiply 9,000,000 by -- I think it was 45 cents by that time, and come up with an expenditure of about a little in excess of \$4,000,000.

Q May I ask what numbers you had been thinking in terms of, because I am certain that you must have thought in terms of number of expiration dates.

A I don't know that I had set a figure in my own mind, but one thing that concerned me considerably in my talk with Mr. D'Arpa previous to this meeting was the fact that we couldn't use these in many -- in a number of states, Massachusetts being a good example, where very few companies were really looking for automobile business because of their compulsory law and all their bad experience up there. And then we had problems in other states where we were not set up to swallow very many, states like Idaho, Montana, Arizona, because of the fact that we didn't have branch offices in those states. We were relying on general agents who were never noted for being very aggressive in the sale of anything. It was

had quite a number of states where because of the nature of our setup we would be unable to utilize very many of these leads or X Dates, and I found Mr. D'Arpa in the preliminary talks very anxious to accomodate to our peculiar needs in situations, and I think I was led to believe that we could almost call our own shots on where we were to get them, what states, and I realized that we couldn't just take one hundred or two here and there, I am not saying that, but I really had no idea that the total number would be anywhere near as great as was indicated at the end of that meeting in Pelham.

Q How many branch offices did you have in 1962, approximately, throughout the United States?

A We make a distinction between a branch office and a production office, but I think that is a little academic for your purposes. They are company offices, and I suppose we had perhaps in the neighborhood of 70 at that time.

Q With the exception of the states that you have noted, Idaho, Montana and Arizona, is there at least one office in each state?

A Those aren't the only exceptions necessarily. I was simply using those as an example. In many states we have several branch offices. In Pennsylvania I think we have five.

Q Do you know in number approximately how many states

you don't have a branch office in?

A Let me see if I can. If I had a map here, I could do a lot better.

Q Maybe I could help you with this map.

A I will use production office synonymously with branch office, because there's really different --

Q I am referring to 1962.

A New Hampshire, Vermont, Nebraska, South Dakota, North Dakota, Montana, Wyoming, New Mexico, Utah, Idaho and Nevada.

Q Did you mention Arizona as a state not having it, and this time you didn't?

A I think we have opened a branch since. You want it at that time?

Q Right.

A We did not have a branch there at that time, but we do now. That is what confused me

Q In the states that you mentioned, New Hampshire, Vermont, Nebraska, South Dakota, North Dakota, Montana, Wyoming, New Mexico, Utah, Idaho, Nevada and Arizona, in any of those states that you have mentioned, has a branch or a production office been opened since 1962?

A Well, we opened a little service office in Boise, Idaho since that time. We don't call it either a branch or

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differences as to certain underwriting facilities that they didn't have, but I don't really believe it is cogent to this.

Q For purposes of an X Date program, the production office and the branch office for all practical purposes were one and the same?

A I think so, yes.

Q You stated that either Bob D;Arpa or Max Wallach stated the large number of X Dates they intended to purchase at this meeting in July of 1962 --

A They intended for us to purchase.

Q They intended for you to purchase.

A Yes.

Q It came as some surprise to you because you had understood previously that they would more or less supply a reasonable quantity in your mind to suit your needs?

A Yes, I think that is a fair statement.

Q Do you recall who stated that they anticipated selling eight or nine million X Dates to you per year?

A I don't believe I could.

Q Could you -- and take all the time you need -- try to recollect everything that was said and every impression that you had about the number of X Dates that they said that

state, in other words, but unless you took eight or nine millions, they would go to another company and would not sell to you? Is this the attitude that they took, to your best recollection?

A I don't recall that they made any statement of that kind. The only thing I might add is that -- both Mr. VanGils and I were well aware from previous conversations, anyway, that they were very anxious to find someone who would take their output. This was made clear to me in my first talk with Mr. D'Arpa.

Q I understand that, but by the time you got to Pelham with Mr. Van Gils, at that time rapport had been developed between Bob D;Arpa and yourself?

A Yes.

Q You had telephone conversations, and I take it by your notes and actions that you were fairly friendly at this time?

A Right.

Q In the course of conversation the number of X Dates came up, and I am trying to find out, and perhaps you have no recollection, but whether or not you felt at that time that unless you did take the eight million or close to it, that you could not have the service.

A I would say that we definitely came away from that conference with that thought in mind. Just how it was conveyed to us, I'm sorry, I can't remember.

Q Did you ever as Bob, to your recollection, at that time or any other time or Mack Wallach or anybody in the Romac organization, whether you could buy less than the eight million?

MR. KENNY: Is it eight or nine million?

I heard this witness say nine.

THE WITNESS: You are asking me?

MR. REYNOLDS: The testimony, I think, is clear that Mr. Ellis testified as to nine.

Mr. Karp has mentioned eight or nine. Whatever the number was.

MR. KARP: The previous question is withdrawn.

BY MR. KARP:

Q Do you recall if it was specifically nine versus eight, or was it in that general vicinity?

A I have a figure of nine million, which has stuck in my mind. This could vary a million up or down, I think.

Q My next question is, did you at any time, either at that meeting in any form, or at any future time, or any time prior to that, ask them whether or not they could service your needs on a substantially smaller scale or on any scale?

A I can't remember asking that specific, direct question. I could throw some light on it, however, perhaps, by saying this, that I tried to be as helpful to them as I possibly could. I thought they had a worthwhile product, and still do. We suggested -- I am quite sure at that meeting either Mr. VanGils or I or both of us suggested a possibility of -- let me rephrase that a little bit.

Realizing that the vast number that we would be expected to digest, and realizing immediately that this would be a real huge stumbling block for us, I do recall now very definitely that we suggested to them the possibility of their selling this service to agents as individuals and, of course, this would have solved the problem as far as we were concerned, and as I recall it, we told them then that we could help them by recommending this to our agents, notifying them that it was available, and through our sales organization help them to market it in this way, and as I recall it, they felt that they just could not swing this, and I can see why. It would take a rather large sales force to contact 100,000 agents across the country.

Now, whether it was at this interview or later, I think I suggested or it might have been Mr. VanGils, the possibility of selling this to the National Association of

Q How did you plan to utilize the X Dates that you would have purchased from Romac?

A We had not formulated plans to the extent that we knew how we would expect to make them available to our agents, that is, from a price standpoint. We had discussed various plans as to whether or not we might make them available gratis. We also discussed various cooperative plans where we might pay for part of the cost and they would pay for part of the cost. Without much discussion, obviously it would have been handled through our branch office system. For instance, if we were to have received "x" number of X Dates in the State of California, we would have distributed these by -- geographically, some to the various branches that handles the State of California, and having a field sales force of -- a salaried sales force. These salaried field men would have tried to persuade our agents to take them, buy them or give them to them and we would, of course felt constrained to ride herd and see as best we could, persuade them to follow them up carefully and make the best use of them that they could.

Q Did you have any numbers in your mind concerning this program of the number of X Dates in a year that you would be able to digest?

A I can't recall that we went that far, no.

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Q You must -- I think that you must, by dealing with promotion have had some idea in your mind at that time of the number that you could have absorbed. Can you give me your opinion as to that?

MR. REYNOLDS: I think that the witness indicated that he had no number in his mind.

MR. KARP: I think the witness had indicated that he had not specified a number. I am now asking him how many in his estimate he could have handled.

MR. REYNOLDS: You mean his present estimate of how many he could have handled back in 1962?

MR. KARP: That's right.

A That would be very difficult. Our North Jersey test, which was very small, indicated to us that a certain type of agent would probably utilize these in a reasonable quantity and do a reasonably good job of following them up and making as many sales -- a satisfactory number of sales. That makes us come down to how many of that type we thought we had, you see. We had no list or count by categories. I could tell you generally the type that we thought at that time and still think would handle that type of work. They are younger agents, salesmen, and they would have principally been these manpower men that we previously mentioned.

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records in Hartford, I couldn't give you an accurate number on the manpower men.

Would you like an estimate on the number of those?

Q Yes.

A You will recall that we defined yesterday two categories of manpower men.

Q That's correct.

A I would say that men on their own, as we used to call it, not connected with established agencies, in 1962 we might have had as many as 240, perhaps, and perhaps an equal number of young men in agencies that were under this program.

I would say that 500 would be probably the tops in both categories.

Q Offhand, do you know approximately how many agents you have altogether -- or had altogether in 1962? I realize it is an approximation.

A It is an amusing thing to us. You have to have a definition. Many years ago we used to advertise that we had 25,000 agents coast to coast, but that was a little exaggeration, because that was simply the number of accounts that we had with agents, and even somebody that wrote one malpractice policy a year for a \$15 premium was an account, so we have records by the number that give us in excess of

well, but you keep breaking this down. Then I think we -- we have changed these categories from time to time. I think we now have a breakdown of 40,000 and 100,000, but those should be in our agency department records, I would say.

BY MR. KARP:

Q Getting back to your contacts with the Romac organization, I believe you stated before that the meeting on July 10th in Pelham broke up approximately at 3:30, because you got home by supper that evening?

A Three-thirty or four.

Q Could you tell me what happened then?

A After we left?

Q Yes.

A Well, for part of the ride home we certainly did discuss what we had seen and heard there and came to the rather regretful conclusion that we just could not digest this number.

Q Mr. VanGils testified yesterday, and I believe you were present during his testimony, that he then made the decision or you discussed the decision that you could not take the expiration dates from Romac?

A Yes.

be as fair as I possibly can. I wouldn't say that we couldn't have had some use of them in New York, but we didn't have our leader, our Auto-Rite policy. We couldn't sell it in New York. It was not approved there. We could have had some minor use, I think, for -- in connection with family auto, but this would have been very sparse, I think. So we always thought in terms of the aggressive sales work, we also thought at that time of Auto-Rite, which was our lead auto policy, the one we were trying to use to prevent Allstate and Nationwide and State Farm from getting the whole market, and this took us out of -- it was not approved in Massachusetts, we couldn't sell it there. We couldn't sell it in New York State, we couldn't sell it in North Carolina, and we could not sell it in Texas.

There may have been two or three other states where we had not had approval by the year 1962, which may have come along in 1963 or 1964. I can't recall that without seeing my list, which I use to keep in my desk, but I definitely know, and we still are not able to sell it in New York, Massachusetts, North Carolina and Texas. Those are the states, the first three because they have compulsory automobile insurance laws; Texas because they have an Insurance Department which insists that everybody use the same policy,

Q What did his statement say?

MR. KENNY: It is in evidence.

MR. REYNOLDS: I think there is a press clipping in evidence.

MR. KARP: I realize there is, but I would like to get his recollection.

A My recollection is that it had come to his attention that there was -- I don't think he named the plaintiff here -- but it had come to his attention that an organization was -- either had or was about to make available the expiration dates of large numbers of automobile owners, expiration dates in Connecticut, and that this was contrary to the agency licensing laws of the State of Connecticut, and that he would prosecute anyone that he caught selling these or trying to obtain expiration dates from the citizens of Connecticut.

Q Did you discuss this statement with Mr. VanGils?

A Yes.

Q Was this a factor in your rejecting the program?

A It would have some influence in that, if his opinion were to stand up. We would have lost the State of Connecticut which we were very much interested in, obviously, being our home state.

Q Did you ask legal counsel for any opinions at that

MR. REYNOLDS: I am going to make the same objection and instruct him not to answer the question.

You are asking him, did he talk to a lawyer about a particular problem, and I claim that is a privileged communication, and I stand on the privilege and instruct you not to answer that question.

(Whereupon, a recess was taken.)

BY MR. KARP:

Q We were discussing a while back aggressive young men. How many X Dates could an aggressive young salesman handle in a month, how many leads?

A Do you mind if I use a piece of scratch paper? I could give you a guess. I would say a couple of hundred.

Q A couple hundred a month?

A Yes, give or take a dozen or so.

Q Getting back to the rejection of the offer of Romac people, what were the reasons for this rejection? You have given me some, but I would like you to reiterate what they all were.

A Well, for practical purposes, it was the vast number that we felt we were obligated to buy if we went ahead with it.

Q Were there any other factors?

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A Well, there are collateral factors in that the reason why we were so -- why we felt we couldn't digest them was simply due to our organization, but --

Q I don't quite understand.

A Well, if we had had 20,000 salaried or salesmen that we could control, I think we might have taken quite a different viewpoint on it. I mean that the characteristics of our own sales organization obviously had a part to play in the rejection of a large quantity.

Q Were there any other reasons?

A Well, it amounted to a lot of money, and this in our way of doing business at that time was a tremendous amount of money for that purpose. We just didn't feel that we could recommend that we spend that much money, taking everything into consideration.

Q Did you really get into the money factor?

A Well, as I previously said, it didn't take long to multiply 45 cents times 9,000,000 and come up with --

Q I take it you did not have objection, then, to the 45 cents per name? It was just the number of names?

A I don't think we would have quibbled about whether it was 30 cents or 40 cents or maybe even 50 cents, no. I don't think that's a problem.

Q Other than the factors that you have given me so far, are there any other factors which played a part in your decision not to accept the program?

A I don't really know if there were any that we have not recited. The fact that there were many areas where we felt we wouldn't be able to get anything but very sparse use had an influence, of course. The opposition of some agent associations certainly had some bearing on it, to this extent only, that we realized that it would make our job somewhat harder than otherwise.

Q Did you discuss that problem, the problem of opposition, of which I take it you were well aware --

A Very well aware, yes.

Q -- with Mr. VanGils?

A Yes.

Q What was, to your best recollection, your conversation with him concerning this opposition?

A We had several conversations on this subject. We both agreed, as I have said, that this would make our task more difficult, but we had been through programs before several times where we bucked the opposition of organized agents, and I remember distinctly the phrase or the thought expressed by both of us that we weren't deterred where we

felt we had a desirable, honorable and logical purpose in mind for taking this step. I could give you examples of other projects where we have gone ahead in spite of the opposition of organized agents.

Q Go ahead.

A Well, for instance, way back in the Twenties, perhaps late Teens, Twenties, there was terrific opposition among organizations to the opening of branch offices. We went ahead and expanded our branch office operation, because we felt it best served the agents and the insurance public.

There was opposition to the so-called office agent, that is, an agent who would quarter himself in the space of a branch office and receive in return for a lower rate of commission more service and help from the branch office. Organized agents opposed that. We went ahead and got a very large office agency plant in many of our branches. The one that I am most familiar with came with the introduction of our Auto-Rite policy. Organized agents were most vehement in opposition to this, particularly the direct billing feature and some were opposed to it -- some of the policy conditions. Many, of course, were opposed to the fact that it carried a lower rate of commission, and this was -- I personally experience

tive about it, I wouldn't object to the question.

Q Do you have any opinion concerning the maximum the company would have expended, if you had approved and presented the program to higher authorities?

A I can certainly give you some figures that I am sure would not have been approved. Our total advertising budget for the Aetna Casualty & Surety Company in those years was in the neighborhood of one million dollars, and I am quite aware of some of the work that was done to keep that down, to pare it down. And I am sure that a national advertising program would have had much more favorable response than this program would have. That's perhaps a partial answer. This would only be a wild guess. I hate to be held to a figure here. I would be glad to say I guess that this would have been in the neighborhood of perhaps three or four hundred thousand dollars. We might have been able to have absorbed that at 45 cents a week and be much more interested than we actually were.

Q Did you have any contact or any knowledge of anybody in the Aetna organization having any contact by any agent concerning the Romac proposal?

A No, I did not. You asked me if I personally had knowledge of any contact?

Q Yes.

A That's right, the answer stands.

Q Do you have any knowledge of any other person in the Aetna organization having any contact by any agent concerning --

A Not specific knowledge, no.

Q Do you have any knowledge of any rumors of anybody in the Aetna having --

A No.

Q The fact that other insurance companies have rejected the Romac program, does it have any bearing on your rejection of the program?

A When you use the term, any, that's pretty broad, any bearing. I must admit that the refusal of the two Hartfords had some bearing in that we realized then that if we were to go ahead with the Romac program that it would be more difficult.

Q Difficult exactly in what sense?

A Well, as I think I pointed out in one of my letters to the branch managers, we couldn't expect any of the help that you got by having other companies in this same program with you. Bear in mind that Mr. D'Arpa told me that they intended to make this available to only one stock

cover or after he has had an opportunity to read and sign the deposition --

MR. REYNOLDS: That's fine.

CROSS EXAMINATION BY MR. REYNOLDS:

Q I have a couple of questions, Mr. Ellis; prior to rejecting Plaintiffs offer to sell Aetna X dates did you or did anyone employed by or representing the Aetna Casualty Company or the Aetna Life and Casualty Company to your knowledge ever have any conferences, correspondence, meetings or communications of any kind with anyone representing or purporting to represent or acting on behalf of any other insurance company regarding the possible acceptance or rejection of the offer of Romac Resources Inc., or Modern Home Institute Inc., to sell the Aetna X Dates?

A To my knowledge there were no such communications of any kind.

Q Would your answer then be No?

A Right.

Q When I said any other insurance company, two questions ago, I, of course, included the following companies all of which are named defendants here. Hartford Accident and Indemnity Company, Hartford Fire Insurance Company, Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, the Travelers Insurance Company, the Travelers Indemnity Company,

Allstate Insurance Company, Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, State Farm Mutual Insurance Company, State Farm Fire & Casualty Company, would the answer to my previous question, which was no, have been any different if I had specifically named these companies or anyone of them?

A The answer is no.

Q Prior to rejecting Plaintiffs' offer to sell the Aetna X dates, did you or did anyone employed by or representing the Aetna Casualty & Surety Company or the Aetna Life & Casualty Company to your knowledge ever have any conferences, correspondence, meetings or communications of any kind with anyone representing or purporting to represent or acting on behalf of the Connecticut Association of Independent Insurance Agents Inc., regarding the possible acceptance or rejection of the offer of Romac Resources Inc. and Modern Home Inc. -- Modern Home Institute Inc. to sell the Aetna X dates?

A The answer is no.

MR. REYNOLDS: I have nothing further.

(Whereupon, the deposition was concluded at twelve noon.)

Deponent

Subscribed and sworn to before me on this the

_____ day of _____, 1968.

Notary Public

EXCERPTS FROM TESTIMONY OF
DEAN JEFFERS

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comparative cost of getting X-Date information this way as compared to the cost of X-Date information that was already being used by the agents. Secondly, we were not in operation on a national basis, and I knew this would cause administrative difficulties. Another thing was that the distribution of X-Dates on this program or any similar program to the agency force from a central location would involve a terrific job of administration. These were basic considerations that I used as I came to the conclusion. I did not feel strongly at all that none of our district managers should use this program independently. This had not been the offer by Mr. Wallach but it would be within the authority of our own management people to use this sort of service on a limited, local basis had it been made available to them.

Q And, was this suggested by you in your letter in June 25, 1962, to Mr. Wallach?

A It was.

Q Did you consider also the purchase price of expiration dates in this fashion?

A Yes, sir.

Q And, what was your determination?

A I accepted the advice of my staff on this one pretty much, and that the report given me indicated we could

get names including card identification and other certain information by much cheaper than we could through the offer. I recognized that the comments made by the staff didn't say anything about X-Dates but the cost factor for our organization under this offer would have been a very substantial one. I did not feel that this would be a wise expenditure of company money, and particularly, at that time, at this particular time in the automobile insurance business.

Q Now, referring to Plaintiffs' Exhibit H for identification which was your memorandum to the President's staff, and the operations staff and sales cabinet dated July 20, 1962, in that exhibit for identification you state that you have had a number of inquiries from various sources. It is true. is it not, that as Vice President of Sales whatever inquiries that might have been made to the Nationwide Mutual Insurance Company relative to the program offered by Romac and Modern Home Institute, Inc., that might have come to those companies might have come to your attention in your capacity as Vice President of Sales?

A Yes, sir. contact may have been made someplace else first but it was brought to our attention.

Q Insofar as that is concerned, to your knowledge

EXCERPTS FROM TESTIMONY OF
JOHN F. GILMORE

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JOHN F. GILMORE, called as a witness,
having first been duly sworn by Gerald Gale, a Notary
Public in and for the State of Connecticut, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. KARP:

Q Mr. Gilmore, how old are you?

A 62.

Q How long have you been with the Hartford Company?

A It will be 47 years this December.

Q What position did you hold in 1962?

A Secretary in Charge of the Automobile Department.

Q Secretary in charge of what?

A Automobile Department.

Q What duties did that office entail?

A Mainly that of underwriting, selection of risk.

Q How long had you held that position?

A Since 1953.

Q Did you have any contacts with any employees of
either Romac or Modern Home Institute?

A Only at the time of their initial approach to us.

Q To your best recollection, when was that?

A On or about May of '62. I think it was the 6th

Q I will withdraw it.

Were you aware that there were various publications subsequent to the conference you had with the representatives from Romac --

A I don't know what you mean by publications.

MR. KARP: This is a copy of Exhibit 16. Is it all right to use it?

MR. WARDEN: That's all right.

MR. PIEL: Mr. Karp is showing the witness Exhibit 16 for Identification.

A I had seen that.

Q Do you recall when you saw it?

A Subsequent to the date of the letter.

Q Were the contents of the letter discussed with you before it went out?

A It was not.

Q Did you have any discussions concerning Romac with any other employee of the Hartford Group?

A I recall discussing it with Mr. Barlow.

Q When was that?

A Subsequent to the meeting with Romac.

Q What is your recollection of that conversation?

A My recollection is that I advised against it.

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Q Why?

A Because I didn't think it was good.

Q Why didn't you think it was good?

A It would affect the agency plan. It would affect
our agency plan.

Q How would it affect your agency plan?

A My recollection is that we would -- using this
facility, we would be giving to another agent names and
expirations of another agent of ours.

Q Would you repeat why you were against the program?

A We could have two agents in a given town, and we
would give to the second agent the name and the expirations
of No. 1 agent.

Q Of the agent or of the policy holder that agent had?

A The policy holder.

MR. PIEL: I think the sense of the statement
was that he would give the names of the policy
holders to the other agent.

A That's what I intended to say.

Q Are the agents for the Hartford Company independent
agents?

A They are independent agents.

Q Do you have anything other than independent agents?

MR. PIEL: I wonder if I could interpose on this little point, Mr. Karp. I think when Mr. Gilmore mentioned that the agent has the power to sign for the company, this means -- does this mean that he has discretion to bind the company without asking you first whether to issue the policy?

THE WITNESS: The licensed agent of a company has the power to bind and commit a company.

MR. PIEL: A broker doesn't. He has to offer it to the company.

Q Is this basically the only difference between the two?

A Basically, that's the only difference.

Q Is an Hartford agent, as an independent agent, free to obtain the same type of insurance for a client of his with another company even though the Hartford Company may sell the same insurance?

A Yes, he has.

Q You advised against this program, as I understand it, because a Hartford agent could receive the name of a policyholder being serviced by another Hartford agent, is that correct?

A That is correct.

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Q There is a statement in it that the agent owns his expiration dates?

A That is correct.

Q Does that mean that it would be improper for one agent to take another agent's policyholder away from him?

A The competition between two agents is competition within the market, leaving the company out of it.

MR. WARDEN: Is your answer to Mr. Karp's question no?

THE WITNESS: You phrase the question.

MR. KARP: Read the question.

(Question and answer read.)

A The answer to that is no.

Q It would not be improper?

A It would not be improper between the agents.

Q Have you related to me the total content of your discussion with Mr. Barlow after the meeting?

A To the best of my recollection.

Q Was this meeting immediately subsequent to the Hartford -- or to your conference in the spring of 1962?

A I don't recall if it was immediately following or the next day or 2 days later.

Q Did you have any other discussions with any other

Hartford had advised Romac that the Hartford did not wish to purchase the expiration date service?

A I truthfully cannot recall the date in which I had received them or the date of the letter.

Q Mr. Gilmore, I show you a letter on the letterhead of the Glens Falls Insurance Company, dated June 13, 1962, and addressed to Orrin Burnside, Assistant Secretary of the Hartford Accident and Indemnity Company. Is this the letter to which you referred in your testimony this morning?

A That is correct.

MR. WARDEN: I ask that this be marked as the next Defendant's Exhibit.

(Letter from Glens Falls Insurance Company, dated June 13, 1962, marked Defendant's Hartford Exhibit 1 for Identification.)

Q I now show you, Mr. Gilmore, a copy of the complaint in this action and ask that you read to yourself the names of the defendants as set forth at the top of the first page.

A I have read it.

Q Did you discuss with any officer, employee or other representative of any of the corporations or organizations named as defendants there, other than the Hartford Companies, the Hartford's decision not to purchase the expiration date

service offered by Romac Resources?

A. I did not.

Q. Did any officer, employee or representative of any of the other defendants in this action discuss with you a decision by his organization to accept or reject an offer of such a service from Romac Resources?

A. They did not.

MR. WARDEN: No further questions.

REDIRECT EXAMINATION

BY MR. KARP:

Q. Whose handwriting is this?

A. That is Orrin Burnside's writing.

MR. PIEL: Referring to Exhibit Hartford 1.

Q. And this, "Discussed in person with." What is this, if you know?

A. Jack Derby, at Automobile Rating Committee.

Q. Does that mean it's his note that you spoke to Jack Derby at the Automobile Rating Committee?

A. That is correct.

Q. And do you know what this red writing is beneath that statement?

A. I do.

Q. What does it say?

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EXCERPTS FROM TESTIMONY OF

R. CHANNING BARLOW

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R. CHANNING BARLOW, called as a witness,
having first been duly sworn by Gerald Gale, a Notary
Public in and for the State of Connecticut, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. KARP:

Q What is your address, your home address?

A Cherry Brook Road, North Canton, Connecticut.

Q How far is North Canton from Hartford?

A Sixteen miles.

Q How old are you?

A 52 years old.

Q How long have you been with the Hartford Company?

A Ten years.

Q What was your position with the Hartford Company
in 1962?

A Vice-president and Secretary.

Q What were your duties as Vice-president and
Secretary?

A Head of the Business Development Department.

Q How many people did you have beneath you, below
you?

A Approximately 30.

Q Is Mr. Gilmore responsible to you?

A No, sir.

Q Is Mr. Cagney responsible to you?

A Yes, sir.

Q Who were you responsible to?

A Mr. Roland Lange.

Q What was his position?

A Vice-president and Assistant to the President.

Q Who was he responsible to?

A The President.

Q Could he be considered a Senior Vice-president?

A Semantics.

Q You were in charge of business development. What did that basically consist of?

A Advertising, public relations, sales promotion.

Q When did you become Vice-president in Charge of Business Development?

A I came to the Hartford as the head of business development. I was then a Secretary. I became Vice-president and Secretary on April 10, 1952.

Q You came, I believe, to the Hartford in 1959?

A Yes, sir.

Q You were in charge of business development from

Q Where did they obtain names from?

A In the specific program that we are talking about, from Ruben Donnelly, as I recall.

Q When was this?

A This was in 1960, to the best of my recollection.

Q Do you know how much they paid per name?

A If you will permit me a general answer as to what names and lists cost like that?

Q Yes.

A It was around 2 cents -- 2 cents a name.

Q Do you have any recollection of how many names were purchased in 1960?

A I do not.

Q Were any names purchased in 1961 or 1962 under this program?

A I am going to guess that the program did continue in '61, '62, although on a reduced basis.

Q Who paid for this program?

A Share-the-cost.

Q What was the ratio that the company paid and the ratio that the agent paid?

A I just don't recall the ratio.

Q Do you know how much the whole program cost?

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the conversation.

A. Mr. D'Arpa explained that his organization had on a test basis been developing data by phone calls with housewives. This data essentially yielded information about the age and value of the household products which the housewife respondent owned. Somewhere in this mix came the idea, according to Mr. D'Arpa, that insurance was a comparable product, and they could get similar kind of information on it.

As I recall, they felt that they could develop expiration dates on automobile insurance. They had a cost figure for it.

Q. What was that?

A. Experimental cost figure was, as I recall, 30 cents, the actual contract price figure would have been 45 cents, again, as I recall. And they were prepared to offer these names in great quantities. That was the proposition.

Q. What kind of questions did you ask him?

A. I think we asked questions relevant to quality. In other words, his organization, could they put this kind of an operation into the field. It was still embryonic, as I recall. Could they identify the name of the insuring company along with the date of expiration, could we specify specific areas should we not want business from a certain area, that

type of inquiry.

Q What were his responses to these inquiries?

A Taking them in a different order, he was able to tailor names to our requirements, the geography of them. He was, as I recall, reasonably convinced at that point that he could not identify insurers, and he, I think, was convinced about the fact that he was going to put together an adequate organization.

Q What was your response to him concerning the program at that time?

A We expressed interest, and the fact that we would, of course, have to give it considerable amount of thought. Before we broke up, I think we had at least two bugs in the program were apparent to us.

Q Other than the name of insurer, what was the other?

A The other was that we were very concerned about sending one agent's expiration dates to another agent.

Q What else was stated or said by any party at that conference, to your best recollection?

A It was obviously covered in much more detail than I have. I have to believe that. It's difficult for me to call up much more than that.

Q Do you have any recollection of Mr. Cagney saying

anything, asking any questions or making any statements?

A. I have no specific recollection of any specific comment or question that he made.

Q Do you have any recollection of any statement or question that Mr. Gilmore might have made or asked?

A. I have a reasonable or hazy recollection of the fact that John was particularly interested in this agency relations question we just touched upon.

Q That was again what?

A. Sending of one agent's expirations to another agent.

Q Even if those expirations dealt with a policy written by another insurer?

A. Yes.

Q You were really concerned about another agent's expiration or another agent's policy with another company?

A. Yes. Remember, I am talking about these as being our agents.

Q But in that instance the agent had not written the insurance with the Hartford Group?

A. I am talking about expirations of policies written by Hartford in addition to those written by other companies.

Q My question to you was, are you really concerned or were you concerned at all with an agent's policyholder,

which was written with another company?

MR. WARDEN: I object to the form. Do you understand the question?

THE WITNESS: I don't think it's adequately specific for me to answer.

Q I will ask it again.

A Would you give me a nice example?

If you had two Hartford agents, let's assume in the Bridgeport area, and if the first agent, let's call him Agent A, had written a policy with some other company, and he could have written it with the Hartford Company, would you mind if Agent B went after the policyholder or the person who had the policy with the other company, even though it was written by one of your agents?

A You stated it very precisely, and very precisely I will say no.

Q Have you told me everything that you can remember of substance about the conference with Bob D'Arpa in May of 1962?

A I believe I have.

Q What was the result of the conference so far as Mr. D'Arpa was concerned?

A You have to ask him that.

Q But your relationship with Mr. D'Arpa, did you say

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Q Was there any mention by Mr. D'Arpa concerning the sale to two firms?

A Yes.

Q What was that?

A Mr. D'Arpa was very flat about the fact that he was not offering us his service on an exclusive basis, that he intended to have other companies buy in addition. Specifically, he said he would like to have one non-agency company buy this service.

Q This would not have been acceptable to you, would it?

A It was not a turning point in any decision process with us, as I recall.

Q Would the offer have been more attractive if it had been offered to you alone?

A I think that's a --

Q On an exclusive basis?

A I think that's an axiomatic truth.

Q Did you ask Mr. D'Arpa if it was possible to have it on an exclusive basis?

A I would guess that we might have. I do not recall.

Q Would you have asked other than for a desire to have it on an exclusive basis?

A. Yes.

Q. You stated, I think, you may have attended one conference?

A. Yes, sir.

Q. Do you have any recollection when that might have been?

A. They only have two meetings a year which I might have gone to. One is usually at the end of June, one is traditionally in late November. Whether I went to either in 1962 or '61, I cannot state definitely.

Q. Do you know any employees personally at the Nationwide Mutual Insurance Company or the Nationwide Mutual Fire Insurance Company?

A. No, sir, I do not.

Q. Do you know any employees of the Aetna Casualty and Surety Company?

A. Yes, sir, I do.

Q. Did you know any in 1962?

A. Yes, I did.

Q. Who was that?

A. I know a great number of employees of the Aetna Life and Casualty. I used to work for Aetna Life and Casualty.

Q When did you work for Aetna?

A In 1938 to 1941.

MR. WARDEN: The defendant in this case is the Aetna Casualty and Surety Company.

THE WITNESS: When I speak of them, I am speaking -- I was speaking more broadly than that. I was speaking of the companies of what is now Aetna Life and Casualty.

Q Did you know any employees at The Travelers Insurance Company, The Travelers Indemnity Company in 1962?

A Yes, sir.

Q Did you know any in the Allstate Insurance Company in 1962?

A No, sir.

Q Did you know any employees in the Liberty Mutual Insurance or Liberty Mutual Fire?

A No, sir.

Q Any in the State Farm Companies?

A No, sir.

Q Did you have any discussions with any of the persons you knew in 1962 in either the Aetna or Travelers -- I believe those are the two companies where you said you know people -- about Romac or about the sale of expiration dates?

A. No, sir.

Q. On June 16, '62, you issued to all Hartford agents a bulletin concerning the proposal of Romac, and I show you Exhibit 16. Do you recognize that bulletin?

A. Yes, sir.

Q. Is that a copy of the bulletin you sent out to all Hartford agents?

A. It looks to me as though it is, yes, sir.

Q. Are you aware that there was a great amount of publicity concerning that publication?

A. Yes, sir.

Q. Did you have any discussions with any person or persons concerning Romac subsequent to the issuance of that bulletin?

A. Never by name.

Q. Pardon?

A. Never by name.

MR. KARP: Read the question and answer, please.

(Question and answer read.)

Q. Could you explain that a little further?

A. I mean that I did have discussions of this letter, but that never in these conversations was the national research

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service identified by name.

(Recess taken.)

Q Did you discuss this bulletin with any other employee of Hartford before it was sent out?

A Yes, sir.

Q With whom did you discuss it?

A With my senior, Mr. Lange. He then chose to show it to his boss, the President. It was shown to or sent to Mr. Gilmore. It had to be shown to people who were responsible for our agency relations, our agency department, Mr. DeVore. It was shown to Mr. DeVore's senior, Mr. Handley.

Q Who was he?

A Mr. Gilmore's reporting senior. And to our law department. All of this being a normal, reasonably normal review procedure for a general bulletin.

Q How many general bulletins do you issue, or did you issue in 1962?

A I personally?

Q Yes.

A I don't remember, but I will guess maybe five.

Q Did all or most of those go through the same procedure that you just outlined?

A The rules are that any affected department should see

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a bulletin, plus the law department, plus my showing it to my boss and he showing it to anybody he wanted to.

Q Is it normal for --

A The pattern is along this line.

Q I believe I asked you if you had any contacts with any of the other defendants in this case concerning Romac, and your answer, I believe, was no?

A Yes, sir.

Q Do you know if any other employee of the Hartford had any contacts with any of the other companies which are defendants in this action concerning Romac in 1962?

A To the best of my knowledge, there was no outside contact at all.

Q May I ask why you sent this bulletin out?

A May I quote from the bulletin? We felt we should advise our agents that this information precious to them had actually been put for sale on the market place. It was a matter of great moment to them. I am paraphrasing.

Secondly, we felt that they should know that we felt somebody else, some competitor would be peddling this information.

Finally, we wanted to caution them that they should be especially diligent and maintain the reputation of Hartford

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agents for very good client service, to render themselves impervious to this kind of competition.

Q Is that the only reason you decided to issue the bulletin?

A The salient reasons for it are right here in the bulletin.

Q Every basic reason you issued the bulletin is in the bulletin?

A I think so. I think there is a feeling that we who are in competition for agent favor were going to be putting our best foot forward in the issuing of this bulletin, too. I think that sums it up.

Q Did you receive any inquiries by any of your agents desiring to purchase names through Romac?

A I have a reasonably good recollection that at least one comment came back along the line that this service was something which that agent would like to purchase.

Q You have a recollection of one. Would you have been the person that any inquiries would have been made or to whom any inquiries would have been made?

A You mean by agents wishing to purchase a service like this?

Q Yes.

A I don't think our table of organization is specific enough to really answer that. I think -- I would be a logical place to turn for it.

MR. KARP: I have no further questions.

CROSS EXAMINATION

BY MR. WARDEN:

Q Mr. Barlow, to follow this which Mr. Karp just asked, as to whether you were the logical person for such inquiries to come to, you did sign the letter which is Defendant's Exhibit 16, is that correct?

A Yes. But the reason I didn't simply say, "Well, after all, I signed the letter, who more logically can you write to," is because he didn't say what point in time he was talking about.

Q At the point in time immediately following the letter.

A Obviously, I would expect to get such an inquiry.

Q You testified a few minutes ago in response to a question by Mr. Karp that you considered that if the Hartford had purchased the service being offered by Mr. D'Arpa, and mailed names of insurance policyholders together with expiration dates of their automobile insurance to your agents, you thought a clamor or outcry would result. Why did you expect that such an action on your part would generate an outcry

or clamor from agents?

A Because of this sacred cow nature of the expiration date in the agent's mind.

Q Would a particular agent have been upset that you were furnishing him with names of policyholders and their expiration dates?

A Unless he is going to be totally selfish, it would seem to me he would have to be. ?

Q In other words, can you explain that statement, unless he is going to be totally selfish?

A I didn't mean to complicate it. Our willingness to give him expiration dates probably means that we are broadcasting expiration dates, and this goes back to the sacred cow problem.

Q In other words, the fact that you are sending him expiration dates indicates to him that you may be sending his clients' expiration dates to other agents, is that right?

A Yes, sir.

Q Would he be concerned about this, whether he had placed the insurance of a particular client with the Hartford or with another company?

A In his case, they are his clients -- they are his clients' expiration dates, regardless of where he placed the

business, so he is concerned.

Q Just to clarify the record, I will ask you some questions which are somewhat similar to those that Mr. Karp asked a few minutes ago. Did you consult, you personally -- consult with any officer or employee or other representative of any of the defendants in this action, about whether or not Hartford should accept the service being offered to it by Mr. D'Arpa?

A Absolutely not.

Q To your knowledge, did anyone else in the Hartford Companies discuss this decision with an officer or employee or representative of any of the other defendants?

A No, sir.

Q Did an officer, employee or representative of any of the other defendants consult you about his company's or organization's decision as to whether or not it should purchase the service being offered by Romac?

A No, sir.

Q To your knowledge, was any other officer or employee of the Hartford consulted by anyone representing another of the defendants in this action about whether that defendant should purchase the service being offered by Romac?

A No, sir.

objection to delivery to its agents by the Hartford, not by direct dealing between Hartford agent someplace and somebody in the business of supplying X dates, you mean the service that was being offered by the plaintiff in this case, which was to the Hartford, and then to the -- then the Hartford would send it to its agents?

MR. KARP: Yes.

MR. WARDEN: You so understood the question?

THE WITNESS: Yes.

Q The answer was yes or no?

A Yes.

Q It would have objected?

A Yes.

MR. KARP: I have no further questions.

RECROSS EXAMINATION

BY MR. WARDEN:

Q You answered Mr. Karp's last question yes, Mr. Barlow, and his question, as I recall it, was, would you have had any objection to this to implementing this program being offered by Romac if it had been possible to remove from the lists going out to your various agents the names and expiration dates of insured's having their insurance through the Hartford

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with another agent; and you said, yes, you still would have had objection.

Can you tell us why you would still have had an objection?

A. I must say that I have to speak to Barlow, everything else is conjectural. I don't think that we would want to be giving one or our agents the expiration dates of another one of our agents, whether or not they were expiration dates in the Hartford Companies.

Q. So far as your personal opinion is concerned, why is it that you would not want to do that?

A. Because we are passing a weapon for one agent to use against another one of our agents.

Q. Why did that concern you? Why would you be reluctant to do that?

A. To go back to the beginning on this, we did not want to pass out lists which had Hartford names in them for the obvious reasons discussed.

Q. Previously discussed today?

A. Yes. Agents feel that they own their expirations, and that they are -- the life blood of their business, the continuation of their business. If we started trafficking in that as a company, we are taking away one of the things which

they think are the corner stone of the American agency system of doing business. //

Q What effect would this have on your relations with your agents?

A It would bring us new disfavor, it would seem to me.

Q You feel reasonably confident of such a prediction?

A Yes.

Q Was that the primary reason the service that Mr. D'Arpa was offering on behalf of Romac was unacceptable to you?

A Yes. Remember also, that they couldn't satisfy the conditions of the question, either.

Q By that statement, the condition of the question, you meant that they were not offering even to eliminate Hartford insurers, is that correct?

A Yes, sir.

MR. WARDEN: That's all.

REDIRECT EXAMINATION

BY MR. KARP:

Q The real reason the agent would have been very upset is because it means that somebody would have, or could have, the names of his policyholders, isn't that correct?

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EXCERPTS FROM TESTIMONY OF
JOHN B. CROSSON

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A In 1950 when I became an agent I was associated with a large general agency in Hartford which was affiliated with the Connecticut Association of Insurance Agents, the George B. Fisher Company.

Q Can you tell me what the nature of that organization is, what its purpose is and who are its members?

A Its members are some 1800 agents or agencies in the State of Connecticut who band together for the purpose of fostering and promoting their own individual interests as agents. It's like any trade association.

Q It's a trade association?

A Yes.

Q Its purpose is to further the interests of its members?

A Right.

Q Have you at any time held an office in that association?

A Yes.

Q What offices have you held?

A I was President of the Connecticut Agents Association in 1962.

Q From what period of time?

A Approximately September 20, 1961 to September 20,

A. No.

When you got the calls, what did you do?

A. I think that the concern that I would have as President would be for the well-being of the members of the association, and expiration dates, the words "expiration dates", signal a red flag to independent insurance agents. Court cases have upheld those as being the private property of independent insurance agents and belonging to no one else, so any traffic in them would immediately make us feel that if somebody was engaged in expiration dates, either legally or illegally we would want to know about it.

Q. You said they signaled a red flag and you described that as saying the agents considered expiration dates their own private property, is that right?

A. Not just the agents, but in numerous court cases since the early 1900's the expiration dates have been the property of the individual agents and no one else.

Q. Was the subject of expiration dates made part of any agreements which were written between independent insurance agents and companies with whom they were placing the insurance?

A. Some contractual agreements, to my knowledge, some agency agreements do specify that the expiration dates are the property of the independent agent. Some do not. It's

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kind of an unwritten rule.

Q Can you tell us what you mean by saying that the expiration dates were the property of the independent agents?

A Well, the individual agent is the one that secures the client in the first place. It's not a company, and in the American Agency system it's an individual, so these expiration dates represent the sweat of his brow, so to speak, and no one else's. He has a right to place that business, again going back to our prior discussion about independents with any company he feels can best serve his clients, so those expiration dates belong to him, and if he chooses, at expiration he can move that business from company A to company B, so those expirations are really his and his alone.

That's what I mean when I say a red flag. They are an important part of the vested interest of the insurance agent in business

Q I take it there were written or unwritten agreements with each of the companies with whom the insurance agents placed business that the companies would not utilize the information which it obtained from the agent as to the expiration date of the particular policy which he was placing with the company?

A You are saying "utilize". I didn't say "utilize".

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I know there was one -- more than one contact -- I know we called and we expressed our concern and he said he would look into it and he would contact the Commissioner.

Q Did you hear from Mr. Wagner after that?

A Yes, we did. He indicated that the Commissioner -- that the Insurance Commissioner Premo felt this was illegal and that it was the expiration dates, or words to this effect, belonged to the independent agent, and that anyone trafficking in them was acting outside the law.

Q Did you also contact any insurance companies?

A We had had bulletins presented to us, and I mentioned that prior, from one of the Hartford companies, indicating that they had been approached by an organization to buy these services and that they had decided not to avail themselves of this, and I think that subsequent to this, one of our regular bulletins went out indicating that we had conversation with them and they had declined to do this, so that would be contact with one of the insurance companies, yes.

Q Did you have contact with any other insurance companies?

A Yes, we were in contact with the Aetna Life and Casualty. I was called to a meeting which was held, and I think in my capacity as President of the agents association,

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at which time one of the officers of the company indicated that they had purchased on a trial basis a set of these, a series of these expiration dates.

MR. LEVINE: Discussion off the record.

(Discussion off the record.)

Q To the best of your recollection, do you know who that officer was?

MR. LEVINE: Shall we make -- I called the office of Day, Berry and Howard and spoke to Mr. Dixon and was advised that Mr. Reynolds of his office was out ill and they were unable to have someone present on short notice this morning, and he requested that we continue without someone from their office.

MR. SAGARIN: And he asked for a transcript which he would be able to use in accordance with the previous stipulation.

Q Do you recall the name of the officer who called you?

A I think it was Bill Ellis.

Q Do you recall where the meeting took place?

A Farmington Avenue, Hartford, home office of the Aetna.

Q Who was present at the meeting?

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A. I don't remember the other parties present. There were other people there, but I don't remember.

Q. Mr. Ellis was there?

A. I am pretty sure he was one --

Q. Were there any other people from the C.A.I.I.A. there?

A. I think there were, but I don't know who they were. I don't remember.

Q. Do you recall if the executive secretary, Mr. Wiley, was there?

A. No, I don't.

Q. Can you tell us, regardless of who was there, Mr. Crosson, whether it was you who spoke for the organization, C.A.I.I.A. I am referring to?

A. Yes.

Q. What did you tell Aetna?

A. I think that the reason for the meeting was for them to tell us that they had embarked on a trial program of using expiration dates.

Q. What did you say to that?

A. I told them that we felt that this was not in the best interests of us as agents. I think we even got into discussion as to just how in the world they were going to do.

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this without treading on toes of individual agents whose expiration dates would come up and would belong -- would belong to someone else. We felt that --

Q By belonging to someone else, you are talking about the agents who had written contracts with Aetna?

A Yes.

Q What else did you say?

A I think we told them that we felt that only the agents -- only larger agencies who could afford to buy this would be able to do it so that the smaller individual agent would be left out in the cold. Somebody had to pay for this service and I think we questioned whether it was worthwhile and whether it was legal and so forth.

Q I take it that as President of the association you felt that the -- it was not in the interests of your members for the insurance companies to buy expiration dates?

A That's substantially correct, and also the fact that we had heard from the Insurance Department that this was illegal.

Q Had you received any opinion -- did you have counsel at that time?

A No, we had no legal counsel. When the Insurance Department told us that they felt that this was outside the

referred to as being the letter earlier in the deposition from one of the insurance companies stated that they had been approached?

A. Yes.

Q That's dated June 6, 1962?

A. Right.

Q Prior to June 6, 1962, were you aware of the fact that a national research service had offered the names of automobile insurance expiration dates to insurance companies?

A I would say no. I don't remember. Sometime after that letter or at the time of that letter I think in trade journals and various things around the northeast there was some talk of this service as a by-product of some survey offering it to various state agents association -- to various insurance companies, not just in Connecticut, but I can't say that prior to that letter I heard about it. Subsequent to it, I think we did. There was more talk about it because it then became a local problem.

Q The letter, the second paragraph of the letter begins: "Nonetheless, we feel we should advise you that this information has been offered for sale to us and to other companies," and it continues: "Obviously, the impact of this is that your competition may in the future be working with

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Q Do you know where he is located?

A He is with the R. C. Knox Agency in Hartford.

Q Who was treasurer, if you recall?

A I don't recall, I don't recall.

Q Subsequent to receiving the communication from Mr. Barlow dated June 6, 1962, did you have any conversation with him concerning expiration dates?

A No, not that I recall, never talked with him.

MR. SAGARIN: I have no more questions of Mr.

Crosson at this time.

CROSS EXAMINATION

BY MR. LEVINE:

Q Mr. Crosson, did you as an agent receive memorandum, a copy now is Plaintiff's Exhibit A, that is the memorandum of June 6, 1962, from Channing Barlow and Hartford Fire Insurance Company?

A I as an agent did not receive it because I as an agent did not represent the Hartford Fire Insurance Company. I received it as President of the association, but from my fellow agent who wanted me to know about this.

Q Was one of these sent directly to you, is my question, as an agent?

A These are handed to me or sent to me by a fellow

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agent.

Q Did Hartford Fire send one of these to the Connecticut association?

A That, I don't know.

Q You don't know? You don't recall receiving one?

A I don't think so. I think it was given to me second-hand by another agent.

Q It is your recollection this was given to you by one of the agents who belonged to your association?

A Yes.

Q Now, in the other exhibit, I believe it is Plaintiff's Exhibit B for Identification, this information bulletin of the association, you referred in your direct examination to the sixth paragraph: however you, your state association feels, et cetera. I call your attention to it. Now, why was it that you brought this information to the attention of your members?

A Well, again, it goes back to the fact that we feel that as agents that any time there is an effort made to invade either what we feel are the legal and private rights of ourselves as agents to expiration lists, we become concerned. Expiration lists are in effect the life and blood of an agency, and so that's why we wanted to make sure that, that

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EXCERPTS FROM TESTIMONY OF
VIRGIL P. ROBY

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Q By whom were you notified?

A Mr. Nash and Mr. Coakley.

Q All right. And Mr. Nash's position was what?

A He was an Assistant Superintendent, and so was Coakley.

Q Do you recall what Mr. Nash told you?

A I couldn't repeat exactly.

Q Well, do you have -- to the best of your recollection.

A Tell me what? He gave me a -- he and Coakley came into my office and they weren't in there five minutes, because after I said, "Go ahead," -- I was that type, didn't believe in long meetings -- "tell me what your proposition -- what -- what it is," they told me. I said, "I reject it. Absolutely." And that's all. I said no.

Q Do you recall what the proposition was?

A Something about renewals, getting renewals and selling them to -- for us to use and we -- you want me to answer any more on that?

MR. BRODIGAN: Yes.

A And we -- I support a hundred per cent the American agency system, the Presidents of the American Agency System, for the last 25 years, have been per-

sonal friends of mine. Red Nelson, Council Bluffs,
Billy Webb of Statesboro.

Q Im sorry. Can we have those names again?

A Presidents of National Insurance Association, one is Red Nelson, I don't know his first name, but I know him so awfully well, Council Bluffs, very successful, and the other is Billy Webb of Statesboro, North Carolina. They are just two that I happened to think of.

Q You are also familiar with the fellow who was the President of Connecticut Association of Insurance Agents?

A No, I don't know him.

Q Mr. Crosson, Jack Crosson?

A Who? No, don't know him. He might have represented us, but you must remember, we have, of course, sixteen thousand agents in the field, and I, as Vice-President, couldn't know every one of them.

Q Now, you told me that you believe in the principles of the American Agency System. Is that what you say?

A And -- yes. Yes.

Q And can you tell me what those principles to which you are referring are?

A That the ownership of expirations belong

question. We want to speed it up. Go ahead, Dan. Excuse me.

Q (By Mr. Sagarin) Calling your attention to paragraph 9 of this form, will you read that, please?

A Yes, I read it.

Q Have you had a chance to read that?

A Yeah, I read the paragraph 9 -- paragraph -- well, you said 9 or 10?

Q I said 9.

A On determination -- I read 10. Yes.

Q All right.

A That is just -- that is just axiomatic.

Q Paragraph 9, as you have read it, provides as follows: (reading)

"In the event of termination of this contract, provided the Agent shall pay all collected premiums to the Company immediately, the Agent's records, use, and control of expirations shall remain his property and be left in his absolute possession."

Is that correct?

A That is correct.

Q Is that the provision you referred to as the basic tenet of the American Agency Association?

A Yes, one of the bases. Yes. Well, that

is -- yes.

Q What were the other basic tenets you referred to?

A That, I don't know. None -- I don't know. Friendly relationship and hopeful they will get us a hell of a lot of profitable business.

Q Any other specific tenets of The American Agency System?

A No. No.

Q So that the only tenet of the American Agency System with which you were concerned is this one which is incorporated in paragraph 9 of what has been marked Travelers' P-1 for Identification?

A Repeat that, please?

(Question was read by the Reporter.)

A That's all I know.

Q Is the answer yes?

A As far as I know, it is, yeah. Yeah, sure, ownership of expirations. That is the whole nut.

Q Fine. Now, it is true, of course, that that ownership was not absolute, isn't that correct?

A What do you mean?

Q Well, in the event the Agent failed to pay

1 all collected premiums, then the Company kept the
2 control of the expirations. Isn't that so?

3 A No, you are wrong. No.

4 Q What happened in the event the Agent failed
5 to pay all collected premiums to the Company?

6 A Well, suppose he became insolvent and he
7 couldn't pay and he owed us \$500.00 or \$900.00 or
8 \$10,000.00, we would have to wait until he could pay
9 it or sue him, and we never did, to my knowledge,
10 after 44 years in the business.

11 Q Paragraph 9 provides, does it not, that in
12 the event of termination, and then it has a proviso,
13 "provided the Agent shall pay all collected premiums
14 to the Company immediately, the Agent's records, use,
15 and control of expirations shall remain his property
16 and be left in his absolute possession," you read that?

17 A That's right. That's right.

18 Q And that provision, that fact that the
19 Agent's records, use, and control of expirations shall
20 remain his properties, provided that he pays all his
21 collected premiums. Isn't that so?

22 A No.

23 Q Well, are you saying that there were oral
24 agreements in addition to the written agreement here?

25 A No, we are not.

1 doesn't -- he doesn't have a license for The Travelers.
2 Ordinarily, his license is cancelled.

3 Q What did the Company do with that policy
4 when the renewal came up?

5 A Didn't do anything. Wasn't anything to do.
6 He placed the -- the Agent placed it in another company,
7 in the State Farm or the Fireman's Fund or something --
8 somebody like that that he represents.

9 Q When you had this meeting with Mr. "Cash"
10 and Mr. Coakley, did that take place in your office?

11 A Yes, sir.

12 Q And did they submit a written proposal to
13 you or was it oral?

14 A Oral. As I recall, they talked to me.
15 They couldn't have talked five minutes, and told me
16 what it was. I said, "Rejected, declined. I don't
17 want to hear any more about it."

18 Q Did you give them instructions to make
19 a counter-proposal to the company which was offering
20 the expiration dates for sale?

21 A No, sir, we wanted no part of any connec-
22 tion with that company. I said -- I said, "I reject.
23 I want to hear no more about it. We are a member of
24 the American Agency System and they own the expira-
25 tions and we are not going to interfere with their

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business."

Q Did you have an agreement that you wouldn't interfere with agents' contracts with Hartford or with Aetna Casualty?

A I don't know whether the Aetna held it or the Hartford or Fireman's Fund or whoever it is have contracts or agreements.

Q So, all you were concerned --

A Maybe they only operate with that Agent because he has a license for them. I don't know whether they even have contracts or agency agreements. They are not contracts. They are agreements.

Q With respect to the insurance agents --

A The sole thing --

THE WITNESS: George, maybe you won't want me to say this.

MR. BRODIGAN: Well, I won't know, first, until you say it. So, go ahead.

A The sole thing is the Agent owns the expirations and we do business with him and write -- and that -- and take care of the losses.

Q (By Mr. Sagarin) Now, when you say the agents own the expirations, what -- are you saying that as far as Travelers is concerned with independent agents, which places business with it --

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MR. BRODIGAN: Yeah. I think that
will suffice your purpose, won't it?

THE WITNESS: I hadn't heard from
him. Since I am no longer Vice-President,
I don't get the Christmas card, which is
all right. As long as he had anything to
do with Johnson or Kennedy, I want no part
of him.

MR. BRODIGAN: Come on, now. This
is all going on the record.

THE WITNESS: Oh, it's all going on
the record?

MR. BRODIGAN: That's enough.

Q (By Mr. Sagarin) Mr. Roby, you mentioned
you had a meeting with Mr. Coakley and Mr. Nash.

A Nash, yes, sir.

Q All right. And your recollection of that
meeting is that you told him, "Don't do anything
further about this expiration date," is that correct?

A I did not say that.

Q What is your best recollection of what
you said?

A What I said, I said, "I reject. I want
no part of it. The meeting is over."

Q Did you suggest to them to see if Travelers

and Mr. Nash --

A Yes.

Q Did you have any further discussions with them about the expiration date?

A No.

Q At any time?

A The matter was never discussed again.

Q It was never raised again?

A No.

Q Is that your best testimony?

A Yes.

Q And that is based on your present recollection?

A That's right.

Q And your answer there which you have just given me, that you have no further discussion whatsoever about it --

A With Mr. Nash or Mr. Coakley.

Q (Continuing) With Mr. Nash or Mr. Coakley is based on the same recollection which you have used to tell us what your conversation was with Mr. Nash and Mr. Coakley were today, is this correct?

A "I reject." That is exactly the expression, "and I want no part of this or any further discussion. The meeting is adjourned." That took about thirty

Q But it is your signature?

A Yes, sir.

Q There is no question about that?

A Yes. I know about the letter, too.

Q All right. Now, you remember writing that letter?

A Yes, sir.

Q All right. And to whom did you write it?

A To the managers.

Q And who were the managers?

A They were in charge of our ninety branch offices in the United States, something like ninety, maybe a hundred and twenty-five, now. Like in Sacramento, Tampa, when we opened the Marine National Bank, I came down here and we had about one hundred and fifty agents then, and I made the speech and so forth to them, see, and the luncheon, just a -- you know, formality, pleasure formality. We have them in every principal city in the United States, Canada, Hawaii, Puerto Rico, and so forth.

Q All right.

A St. Thomas.

Q And did you have discussion with anybody prior to writing that letter?

A No, sir.

Q All right. What prompted you to write that letter?

A I -- you want me to answer this?

MR. BRODIGAN: Yes.

A I wrote this to managers. You see, every manager has a field man or maybe ten field men or maybe two that are given so many counties where they are supposed to appoint and help agents cultivate and sell business, and I wanted the managers to know, so that they wouldn't get their neck out, and to tell their field men that we wanted no more part of this. That is the only reason I wrote it.

Q (By Mr. Sagarin) Well, you attached something to that letter. Can you tell me what it was that you attached to it?

A I don't know there was any attachment to it. To all Group Agents. This wasn't going -- I wasn't sending this to Group Agents.

Q I want to be fair with you. If you will, read the letter.

A Wait a minute. I can't remember ever seeing this letter, and I don't know where it came from.

Q You can't remember seeing it?

A No.

Q And you don't know where it came from?

A No.

Q But you do recognize your signature?

A This -- on this, but my signature is not on the other.

Q Your signature on just --

A I don't remember if that was ever attached to my letter.

Q All right. Your signature is not on the second page of that letter. Is that it?

A No, I have never seen that until last night.

Q Well, your letter makes reference to an attachment, does it not?

A I think it does. I think it does. First letter, yeah.

Q Isn't the attachment which is on Travelers' Plaintiffs' 3 for Identification?

A Isn't it what, now? What did you say?

Q Isn't the letter which -- isn't the second page, which is on Travelers' Plaintiffs' 3 for Identification, which is the document you are looking at, the letter to which you refer in the first page?

A I don't know what is in this letter. I can't ever remember this. I don't know anything about

this.

Q It is your testimony that that was not there or you just have no recollection, one way or another?

A I know nothing about this.

MR. BRODIGAN: I think the question is you do not recall that being on your letter?

THE WITNESS: I do not.

Q (By Mr. Sagarin) Do you recall what was on your letter?

A Right here.

Q Do you recall what was attached?

A No, I just said that.

Q You just don't recall?

A Don't recall.

Q But something was attached?

A I don't know. It's attached there, right on that, but I didn't -- I don't know it was attached. I say there it is. I suppose somebody attached it afterwards.

Q The first paragraph of this letter, of the first page of Travelers' P-3 for Identification, states, "We have reproduced on the reversal sent by the Hartford Insurance Company to its agents country-

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you doubt that this was your letter sent
over your signature?

THE WITNESS: Yes.

MR. BRODIGAN: That is Mr. Sagarin's
question. Do you acknowledge this to be
a letter sent out over your signature.

THE WITNESS: This letter was, yes.
That's all.

MR. BRODIGAN: That's all. Go ahead,
Dan. .

THE WITNESS: Well --

Q (By Mr. Sagarin) You said that the letter
says that what prompted you to send this out was the
Hartford letter, but you are not sure that the letter
is true?

A What letter, the Hartford letter?

Q This letter.

A This letter?

Q Yes.

A Oh, now, wait a minute. This letter is
over my signature.

Q That's correct.

A And you asked me a minute ago why I sent
this letter out.

Q That's correct.

1 A And I told you that I did it to forewarn
2 managers and his -- the people traveling that we
3 wanted no part of this system, that the expirations
4 belonged to the agents.

5 Q And what prompted you to send that letter,
6 isn't it so, was the Hartford letter which was sent
7 out?

8 A I don't know.

9 Q Well, can you explain to me why you made
10 reference to the Hartford letter?

11 MR. BRODIGAN: That letter has not
12 been identified as the Hartford letter,
13 Dan. It just says, "The enclosure".

14 MR. SAGARIN: I know it hasn't at
15 this time, but I'm not worried about that.

16 MR. BRODIGAN: All right. You are
17 jumping to conclusion. You are saying,
18 "the Hartford letter". That is --

19 MR. SAGARIN: Well, there is no
20 question that a letter was sent by the
21 Hartford Insurance Company to its agents
22 countrywide. Isn't that so?

23 A I don't know. How would I know that?
24 I had nothing to do with the Hartford.

25 Q (By Mr. Sagarin) Will you recall this

1 statement: "We have reproduced on the reverse side
2 a letter sent by the Hartford Insurance Company to
3 its agents countrywide."

4 A By what? By a --

5 Q "Hartford Insurance Company".

6 A Does it say the Hartford Insurance Company
7 or A Hartford?

8 Q It says, "a Hartford Insurance Company."

9 A That doesn't mean Hartford.

10 Q Do you know any other insurance company
11 in Hartford which sent a letter to its agents, nation-
12 wide, concerning the proposed sale of expiration dates?

13 A No. No, no, and I never discussed any
14 part of this thing with anyone outside of Coakley
15 and -- and Nash.

16 MR. BRODIGAN: Excuse me, Dan.

17 It's 11:10.

18 MR. SAGARIN: You want to break
19 for Mr. Crossley?

20 MR. BRODIGAN: Let me take Mr.
21 Crossley.

22 (Off-record discussion.)

23 (Whereupon the deposition was
24 interrupted and the deposition of
25 Lester F. Crossley was taken.)

Thereupon,

LESTER F. CROSSLEY,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. SAGARIN:

Q Mr. Crossley, where do you now live?

A Venice, Florida.

Q Venice, Florida?

A Mm-hmm.

Q You're presently retired?

A Retired four years ago, February 1.

Q And prior to your retirement, for whom did you work?

A Travelers Insurance Company.

Q And for how long did you work?

A Forty years and one month.

Q And when you retired, what was your position at Travelers?

A I was Casualty and Surety Manager for the Hartford office territory of the Travelers, in Connecticut.

Q And did you hold that position as well in 1962?

1 MR. SAGARIN: Can we strike what is
2 not in the letter?

3 Q (By Mr. Brodigan) Mr. Roby, I want you to
4 read just what is in the letter. I want no extraneous
5 comments.

6 A (Reading) "I decided it would not be in
7 the best interest of Travelers or The American Agency
8 System. As you know, we have always completely sup-
9 ported the principles of the American Agency System.
10 Furthermore, The Travelers did not need such a means
11 of acquiring business. There is, or should be, integrity
12 in any private enterprise. Our program, especially
13 the premium budget plan for new or established agents,
14 is pointed to the acquisition of new policyholders,
15 auto or otherwise, for The Travelers Insurance Company.
16 We don't have to take expirations from other companies,
17 mutual, stock, or reciprocal, to show a steady growth.

18 "After I turned down the proposal to buy expira-
19 tions, it was a closed and forgotten matter by the
20 Company and the men in my Department.

21 "At no time was the subject further discussed
22 by my men or with any other companies or Company men.
23 What our competitors wished to do was of no concern
24 to us. We had too much to do.

25 "There was never casual conversations about this

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1 been marked without the identification,
2 and they have all been identified. I take
3 it we can stipulate that all of the
4 Exhibits are full Exhibits for purpose
5 of the deposition?

6 MR. BRODIGAN: That's correct.

7 MR. SAGARIN: All right.

8 MR. BRODIGAN: I will offer this
9 as Travelers', the Defendants' Exhibit 1.

10 Thank you, Mr. Roby. I have no
11 further questions. Oh, excuse me, I do
12 have one question.

13 Q (By Mr. Brodigan) Mr. Roby, did any
14 agent, either before or after your directive of
15 June 25th, 1962, contact you concerning Romac Resources
16 or Modern Home Institute?

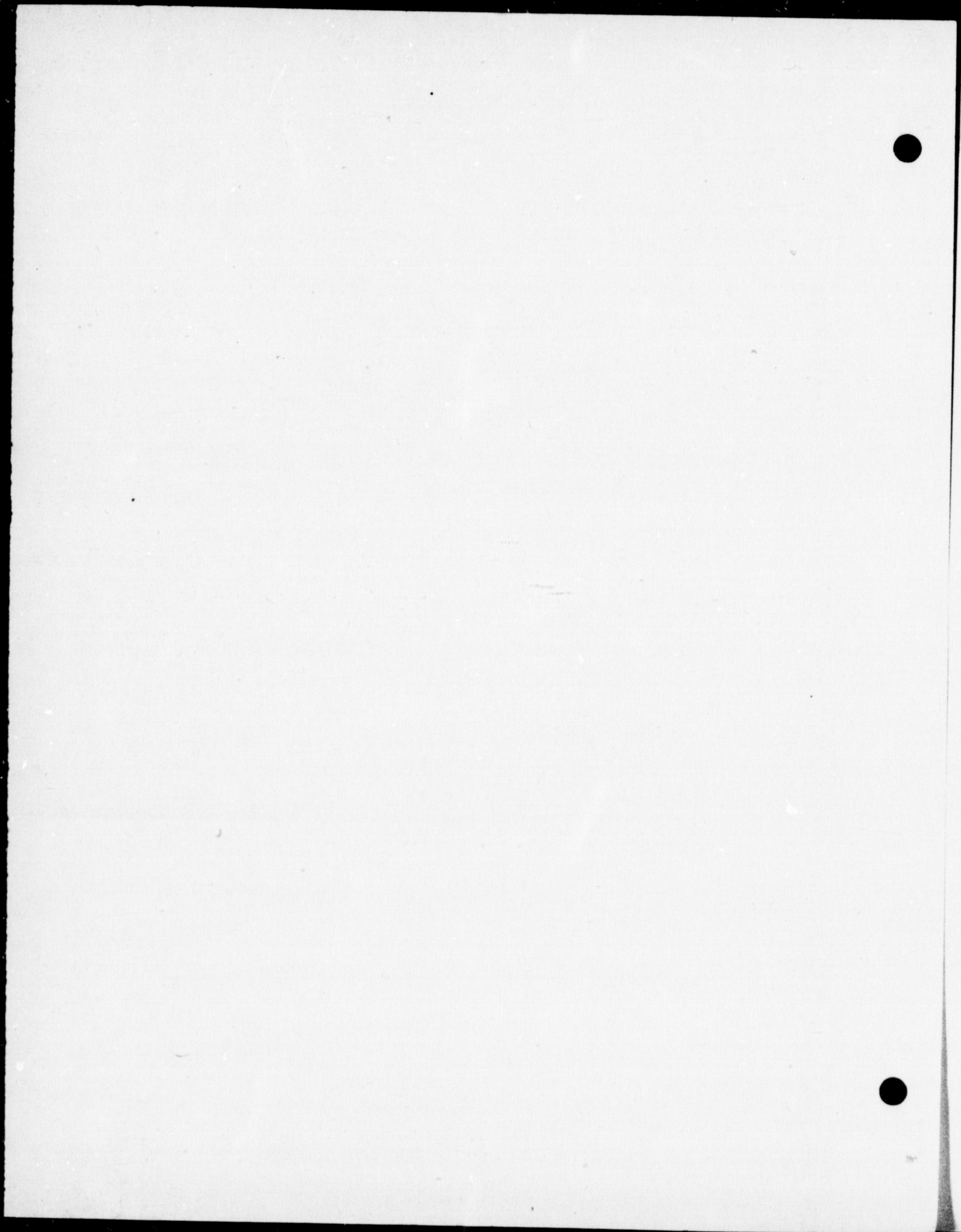
17 A I'm glad you asked. I was hoping you
18 would ask. I was wondering why you -- I never had
19 an agent mention it to me.

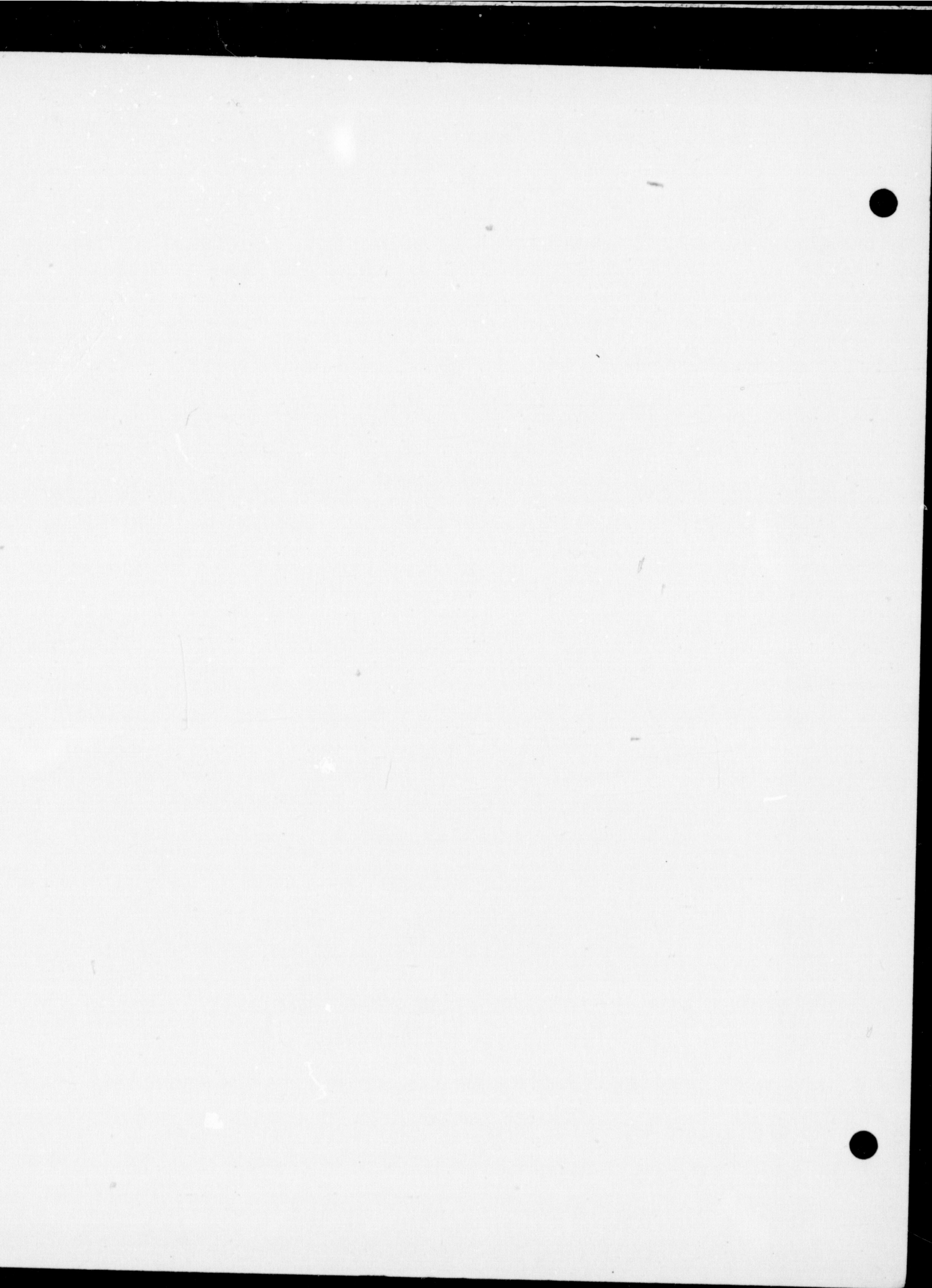
20 Q Either before or after June 25, 1962?

21 A No.

22 MR. BRODIGAN: Thank you very much.
23 I guess I'm lucky.

24 THE WITNESS: Never even had an
25 agent bring it up.





EXCERPTS FROM TESTIMONY OF
LESTER F. CROSSLEY

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McGee does.

Q Lee McGee does work for Travelers?

A He does.

Q Mr. Sheppard?

A He is dead.

Q He is dead, and the other two?

A Some private agencies; one in West Hartford and one in Boston.

Q Are they independent agents, do you know?

A Yes, they sure are.

Q Based on your experience, Mr. Crossley, as a sales manager for Travelers for thirty years, there is no question, is there, that the most advantageous time to sell a new policy to a new customer is to be the time the old policy is going to expire?

A Right.

Q Why is that?

A Well, because that is when the man is interested in reviewing his insurance and may consider up-writes from somebody else or coverage from somebody else.

Q And what you are talking about there is at the time his policy is about to expire, you can discuss with him in practical terms how to save money

1 introduced as Defendants' Exhibit 56,
2 upon cross examination by Travelers of
3 Mr. D'arpa on July 12th, 1966, at page
4 581 of the transcript.

5 Q (By Mr. Brodigan) After you sent out this
6 letter to the producers, and by "producers", is that
7 term synonymous with agents?

8 A Yes, it is.

9 Q Did you have response from any agents to
10 this letter at all?

11 A Not to my knowledge.

12 Q Did you have any contact from agents
13 about Romac or Modern Home before sending this letter
14 out?

15 A No, sir.

16 Q To repeat, the only familiarity you had
17 with these two entities, per se, is something you
18 read in a trade journal?

19 A Yes.

20 Q One last question, Mr. Crossley. You
21 have read Mr. Roby's direct testimony of July 25th,
22 1962?

23 A Right.

24 Q Could you sum up the thrust of that?

25 MR. SAGARIN: I object to that

EXCERPTS FROM TESTIMONY OF
JOHN R. COAKLEY

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Q When did you meet with them to the best of your recollection?

A April 18th.

Q Was that a luncheon meeting, if you recall?

A We had lunch.

Q How long did the meeting take place?

A I would guess two hours, two to three hours..

Q Can you tell us what was said to you and what you said to Mr. D'Arpa and Mr. Wallach, to the best of your recollection?

A They described the kind of service they were selling.

Q Was the service providing lists of automobile expiration dates?

A Yes. We told them it was not our responsibility to make the decision but we would discuss it with our boss.

Q By your boss you meant with Mr. Roby; is that correct?

A Yes.

Q Did they discuss what their plan was?

A Yes.

Q Can you tell me to the best of your recollection what they offered to sell you?

A They offered to provide us on a geographical basis names and expiration dates of auto policy holders, automobile

insurance policy holders.

Q From your experience and your knowledge of the insurance field did you feel that would be a valuable product?

A I always felt expiration dates would be valuable to agents and producers.

Q I take it that the reason it is valuable for agents and producers is that the expiration date is a time at which a producer is most likely to make a new sale?

A Yes.

Q Did you express that feeling to Mr. D'Arpa and Mr. Wallach at that time?

A Yes.

Q When did you next speak to Mr. Wallach or Mr. D'Arpa?

A I spoke to Mr. D'Arpa once on the phone. I would say within a month, as I recall.

Q What did you say to him and what did he say to you?

A The phone conversation, as I recall, was just a confirmation of the letter that he had written me sometime I believe in May.

Q Would that be May 15th, or, on or about May 15th?

A I would think so, yes.

Q What was the content of the letter, to the best of your recollection?

Q I will show you a letter, a copy of a letter which had been previously marked in another deposition as Defendants' Exhibit 56. It does not bear a notation -- this particular copy bears no notation but I will ask you to read it and refresh your recollection. Have you had an opportunity to read it?

A Yes.

Q Is that letter one which was written and signed by you?

A Yes.

MR. SAGARIN: Mark this particular copy Plaintiffs' Exhibit 5 (Travelers) for identification.

(Letter dated May 18, 1962, marked Plaintiff's Exhibit 5 (Travelers) for identification.)

Q Showing you this letter which has now been marked Plaintiffs' Exhibit 5, Travelers, for identification, I refer you to the first paragraph in which you state, "All of us are extremely interested in the great possibilities of this device --" to whom were you referring when you said, "all of us"?

A I was referring to Mr. Nash and myself primarily.

Q Who else were you referring to?

A I was referring to any of the managers and so on

who would have worked in our offices who were interested in sales promotion.

Q In the first instance you stated that you discussed the proposed test with the people who set the Travelers policy in such matters.

A Yes.

Q Would that include Mr. Roby?

A Mr. Roby did head the department.

Q You did discuss the matter with Mr. Roby?

A Very briefly.

Q Prior to writing this letter?

A Yes.

Q When did you discuss it with Mr. Roby, was it before or after you received the letter from Mr. D'Arpa?

A It was between the time Mr. D'Arpa was in Hartford and the time I received the letter from him.

Q What did you say to Mr. Roby?

A As I recall we told him that we had a visit and a proposition.

Q You relayed the proposition to Mr. Roby?

A Yes.

Q And Mr. Nash was with you?

A He and I were together, yes.

Exhibit 5, Travelers, you stated to Mr. D'Arpa, "Because of the Travelers commitment to the independent system of agency representation (that is, the ownership of expirations by the agent himself) we cannot at the present time agree to be responsible as a company for the purchase of this information."

Do you recall that?

A Yes.

Q Is that the sole reason for not accepting his offer at that time?

A Yes.

Q That is, acceptance of the offer would violate that tenet?

A Yes.

Q Did you have any discussions with agents about this claim --

A No.

Q Did you have any discussions with any member of the Association of Independent Agents about this?

A No.

Q Mr. Coakley, sometime in the spring of this year do you recall turning over certain copies of brochures to me at the Travelers office in Hartford?

A Yes.

EXHIBITS

204a

AETNA LETTER TO ROMAC 6/29/62
CONTAINING CONFIDENTIAL COMMUNICATION
TO GENERAL MANAGERS AND MANAGERS

Aetna Life Affiliated Companies

To: Robert E. Diarpa

Date: 6-29-62

Attention: Romac Resumes cluc

For Your:		Please:	
<input type="checkbox"/> Information	<input type="checkbox"/> Approval	<input type="checkbox"/> See Me	<input type="checkbox"/> Type _____ Copies
<input type="checkbox"/> Comments	<input type="checkbox"/> Signature	<input type="checkbox"/> Return	<input type="checkbox"/> File
<input type="checkbox"/>		<input type="checkbox"/> Handle	

Bob:-
As per our phone
conversation today. Dont count us
out on this. We will have problems
but who doesnt

WILLIAM W. ELLIS

Secretary

Agency Department

B-2 Phone 681

Attention Notice
(AA-887-C)

Bill

205a

INTER-OFFICE COMMUNICATION



AETNA LIFE INSURANCE COMPANY
THE AETNA CASUALTY AND SURETY COMPANY
THE STANDARD FIRE INSURANCE COMPANY

10

PERSONAL AND CONFIDENTIAL
GENERAL MANAGERS AND MANAGERS

DATE June 27, 1962

REPLY TO LETTER DATED

FROM William W. Ellis, Secretary
Home Office Agency - E C & S

SUBJECT Automobile "X" Dates

Many of you have seen the bulletin of the Hartford Fire Group to their agents stating that they have been approached by a national research service offering them the opportunity to purchase automobile "X" dates gathered during the process of household interviewing. This bulletin states they have rejected this offer because "the Hartford is however unwilling to be in a position to furnish to one independent agent the names and expiration dates of another agent's policyholder".

This bulletin has created quite a furor in the industry as evidenced by a bulletin on this subject in the Empire State Agency Forum, which is the voice of the New York State Association of Insurance Agents. Many of you, of course, have seen the news item on this subject in the June 21st copy of the Journal of Commerce.

We, too, were approached by a representative of a national research organization - presumably the same one. Since our aggressive Auto-Rite producers have for some time been actively engaged in obtaining automobile "X" dates by various well-known means such as direct-mail, the use of telephone answering services, 'phone calls by the agent or his secretary, and by means of booths at home shows and fairs, we were obviously interested. As a matter of fact, we purchased a trial run of their July "X" dates, sent them to the appropriate Branch Office for distribution to a group of their Auto-Rite producers, and we are now awaiting a detailed report on the results of this test.

While we will not concede that any agency company is more careful to observe the essential tenets of the American Agency System, and while it is a matter of company policy - augmented by our agency contracts - that we never turn one agent's records over to another, it had never occurred to us that any agency company or any group of agents would take the position that the Hartford and the New York State Association of Insurance Agents have, because from time immemorial independent agents have been prospecting and obtaining the expiration dates of policyholders.

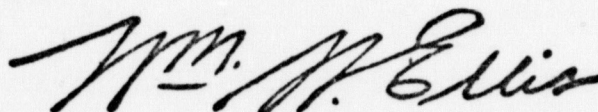
We have always relied on our producers to be fair in the conduct of their business, and when confronted with the well-written, well-handled policy of another Etna Casualty agent, to bow out gracefully. However, we think we would be less than intelligent, and less than fair to our agents if we were to take a position which would deny to our producers the prospecting tools which are so readily available to the directwriter. One is almost forced to the conclusion that some companies and many independent agents are busy locking interior doors against each other - all the while leaving the big

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Jun - 27, 1962

front door wide open to directwriter salesmen who are not in the least bashful about obtaining the independent agent's "X" dates by any means available. We know of nothing in the American Agency System or in the free enterprise system which would indicate in any way that one agent or one company should refrain from obtaining the business of another, as long as they act honorably and ethically.

At the present time, we have not made a firm decision on what our course of action will be, if this source of "X" dates proves to be valuable, and if we are given an opportunity to obtain this service. Probably this particular project is not of sufficient importance to warrant creating an issue with organized producers, but in any event, we will keep you informed as to any further developments.



W.W.Ellis/jgr

Secretary

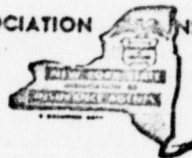
207a

Empire State AGENCY FORUM

NEWS and VIEWS

NEW YORK STATE ASSOCIATION
731 James Street

INSURANCE AGENTS, INC.
Syracuse 3, New York



JUNE, 1962

PRESIDENT'S MESSAGE

Great concern has come from the letter of June 6th addressed to all Hartford Group Agents from the Hartford Fire Insurance Group informing their agents that Hartford Insurance Group had a proposal made to them from a national research service offering to sell the names of automobile insurance policyholders, along with the expiration dates of their policies. The Hartford Group, of course, was unwilling, and correctly so, to be placed in a position of furnishing one agent's expiration to another. We are grateful to the Hartford Fire Insurance Company Group for their concern, not only to their agents, but Independent producers throughout the country.

Many many of our members have called me, written to me and also to our Syracuse Office requesting what action your Association will take in this regard. After careful investigation, we find that this national research service offered this information on the basis that it would be sold to one stock company and one direct writer. The manner in which this information is obtained is that a group of interviewers, representing the research firm, descend upon a community, ringing door bells, and questioning the homeowner on various subjects, one of which is the automobile insurance question. As of this date, nothing illegal can be determined as to their operation, but it points up the fact that in America, nothing is kept secret. In many instances, we are all too free in giving information that in many regards should be held to be confidential. We suggest that you inform your insureds that should they be contacted by any research group that your insureds use a little discretion as to the information given these people.

Many of our members felt that this information was being obtained from various rating organizations or the Motor Vehicle Department. The Motor Vehicle Department of the State of New York has authorized us to inform each and every one of our members and others that may be interested in this problem that they have not, nor would they, nor could they, divulge any information with regard to the expiration date of any policy filed by a registrant in the State of New York. The Motor Vehicle Department has received many queries since the publication of this letter from the Hartford Group and are most anxious to deny any rumor that the Motor Vehicle Department could have been a party to the solicitation.

I think it best to quote the closing paragraph of the Hartford's letter, to wit; "As always, the best defense against this development is prompt personal solicitation of renewals, offering counsel and protection of high quality."

GEORGE A. KRAMER, JR.

208a



FIRST IN PREMIUM FINANCING

More than \$18 million in premiums financed
in 1961 for New York State agents alone

100 William Street
New York 38, New York
HA 5-6060

-8-

This is your program as well as your fellow agents down the street; we all gain by advertising. Be a booster, not a knocker - MAIL THAT PLEDGE TODAY.

Incidentally, your State Association would appreciate information on mis-use of our Big "I" registered trademark. This seal may be used only by members of our Association, otherwise legal action may be taken.

YOUR SAFETY COMMITTEE REPORTS. It hurts just as much if a loved one drowns, is in a highway accident or is burned while cooking out of doors. Since all of these accidents are more prevalent this time of year, it is wise to spend a few moments preventing them. DON'T USE GASOLINE TO start your Bar-B-Q. OBSERVE the beach safety rules. DRIVE SAFELY to and from the Bar-B-Q and Beach. Preach safety to your clients, employees and families in all seasons. Renew SAFETY FIRST and allow accidents of all kinds to expire and lapse.

AGENTS & BUYERS GUIDE for 1962 again available from The National Underwriter Co., 99 John Street, New York 38, N. Y. Price \$5.00 and well worth the investment.

A TIP OF THE PRODUCER'S HAT to the Hartford Fire Insurance Group. We wish to compliment the Hartford Fire Insurance Group for their letter of June 6, 1962 alerting their agents to the proposal made to them by a national research service offering the names of automobile insurance policyholders, along with the expiration dates of their policies. The Hartford Group, of course, rejected the offer but alerted their agents to the possibility of such competition from other areas.

Your Association is investigating this problem and will keep the membership advised. We earnestly solicit any information concerning this matter.

DOES YOUR OFFICE USE AN AGENCY MANUAL? Many do, and much interest has developed on this subject. Roy Duffus of the James Johnston Agency, 1020 Sibley Tower Bldg., Rochester 4, N. Y. is working on a manual for presentation at our National Convention in September and would be grateful for copies of manuals now in use by member agents in New York.

REGIONAL MEETING CHAIRMAN, Sidney Mang announces dates and locations of the 1962 series of meetings. Remember, if you have ideas for speakers or subjects, submit them to Chairman Sid at the Syracuse Office.

October 2nd - Rochester

October 3rd - Olean

October 4th - Buffalo

October 9th - Tupper Lake

October 10th - Syracuse

October 11th - Binghamton

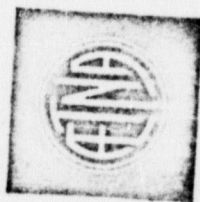
October 23rd - Garden City

October 24th - Poughkeepsie

October 25th - Albany

17TH ANNUAL INSURANCE SEMINAR scheduled for September 16-19, 1962 at Sagamore Lake, N.Y. For the "old grads" and those unable to make previous Schools, mark your calendars now. School hours 9:00 A.M.-4:00 P.M. with plenty of time for boating, fishing, etc. Complete details of program will be contained in a future mailing but Chairman Mal Nalven and his Committee have lined up a stellar program. Registration is limited to 75 students to be accepted on a first-come-first-served basis. See you at Sagamore.

FIRST CLASS



ÆTNA LIFE
AFFILIATED
COMPANIES

151
Farmington Avenue
HARTFORD 15
CONNECTICUT

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William W. Ellis, Secretary

7
To

Mr. Robert D'Arpa
Romac Resources, Inc.
330 Fifth Avenue
Pelham, New York

PERSONAL AND CONFIDENTIAL

210a



AETNA FILE MEMO 7/11/62

FILE

DATE

July 11, 1962

REPLY TO LETTER DATED

FROM

William A. Mills, Secretary
Home Office Agency - E C & S

SUBJECT

Automobile "X" Dates
Opinion - R. L. Fosbrink

I talked at length with General Manager Fosbrink on the above subject having to do with how seriously we should consider this Roper proposition. Mr. Fosbrink feels that we should be as sure as we can that this would be a valuable service and he also thinks that it would be wise to sound out a group from five to seven prominent agents, but he in no way would give us the impression that he feels that we should turn this proposition down simply because of the position which has been taken by the Hartford Group, by the Hartford Branch Manager of the Travelers and the various state associations who have expressed themselves in their bulletins.

Mr. Fosbrink wholeheartedly agrees that we should throw out those names and "X" dates which coincide with our own file pockets so that we will not be in a position of knowingly furnishing an auto "X" date to an agent where that insured has insurance with another Etna agent. Mr. Fosbrink has agreed to ask Controller Donahue to give us some kind of an estimate on the time and cost factors involved in checking against our files. Off hand he thinks it is possibly a feasible thing to do.

WWE/jcr

211a

THE AETNA CASUALTY AND SURETY COMPANY
THE STANDARD FIRE INSURANCE COMPANY
HARTFORD 15, CONNECTICUT

July 17, 1962

Mr. Robert D'Arpa
Romac Resources, Inc.
330 Fifth Avenue
Pelham, New York

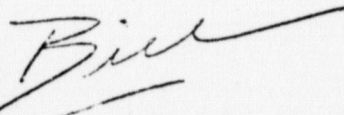
Dear Bob:-

You people have been very patient and understanding and we dislike very much to keep your proposition pending any longer.

While there are, as you know from our evidenced interest, many things about your proposal that appeal to us, we have reluctantly come to the conclusion that we cannot efficiently use the service you are so well equipped to render.

We are very grateful for the opportunity to become acquainted with you, Mr. Wallach and your other associates as well as for the time and trouble you have expended in helping us consider your proposition. If we can be of service to you in the future, please feel free to call on us.

Sincerely,



Secretary

W.W.Ellis/jgr



AETNA LIFE INSURANCE COMPANY
AETNA CASUALTY AND SURETY COMPANY
STANDARD FIRE INSURANCE COMPANY
HARTFORD, CONNECTICUT

EXCERPTS FROM STANDARD
AGENCY AGREEMENT AETNA LIFE
INSURANCE COMPANY



THIS AGREEMENT, made the day and date hereof by and between the undersigned Insurance Companies, all of Hartford, Connecticut, (hereinafter referred to as the Companies)

and

of the City of County of

State of

WITNESSETH THAT:

Each of said Companies appoints the said

as its Agent (hereinafter referred to as Agent, irrespective of number or gender) in the following territory:

(but not to the exclusion of other agents), with authority to solicit applications for the lines of business named herein, and to countersign and deliver policies, bonds, tickets, certificates, endorsements and binders, (which have been issued or executed by, or the issuance or execution of which have been authorized by, the Companies, or any of them) and to collect and to receipt for premiums thereon.

Each Company agrees to allow the Agent commissions, at the rates specified in the Schedule below, on premiums reported and paid to that Company through its designated representative, on business placed with it hereunder covering risks in the territory specified above. However, the Companies severally reserve the right to revise and amend the rates of commissions by written notice to the Agent.

SCHEDULE OF COMMISSIONS

(a) Accident and Health:

Accident:

1. Policies issued on and after July 1, 1956:

A. Risks Classified A to D Inclusive	%
B. Risks Classified E to H Inclusive	%
C. Travel Accident	%

1a. Renewals of Policies originally written prior to July 1, 1956:

Accident, except Popular and Non-Occupational policies	%
Popular and Non-Occupational Accident	%

Health:

Model Policies	%
Family Hospital and Surgical policies	%
Definite and Composite policies (renewals)	%
Sickness Expense policies (renewals)	%

(b) General and Automobile Liability, Property Damage* and Collision*, including Medical Payments, except as listed below

†When written on Premium Discount or Retrospective Rating Plan

*First \$1,000 of STANDARD premium per risk per annum	%
Next \$1,000 " " " " " " " "	%
Next \$25,000 " " " " " " " "	%
On all STANDARD premium over \$30,000	%

(*)

% on Automobile Property Damage—For Automobile Collision, see "(d)".

3. All accounting records of the Agent pertaining to business written through the Companies shall be subject to inspection, at any time, by accredited representatives of the Companies. All unused supplies, including policy forms, and other property furnished to the Agent by the Companies shall remain the property of the Companies and shall be promptly returned to the Companies upon demand.

4. The Companies shall not be responsible for expenses incurred by the Agent such as rent, transportation costs, clerk hire, solicitors' fees, postage, advertising, exchange, personal local license fees, or any other expense whatsoever.

5. The Agent has no authority to admit liability on the part of any of the Companies for any claim under any policy or bond, nor to represent the Companies in any manner other than as specifically set forth herein nor for any lines of insurance other than those specified in such Commission Schedules as are designated above and attached hereto.

6. This Agreement may be terminated at any time by either party giving written notice to the other. In the event of termination for any reason, as to policies or bonds which are issued for periods of more than twelve (12) months and on which the entire premium for the full period is not paid in advance, the Agent shall be entitled to receive commissions at the rates specified in the Commission Schedule only upon premiums earned up to the next annual premium payment date specified in such policies or bonds subsequent to the termination of this Agreement; thereafter if such long term policies or bonds are continued or renewed with the Companies the Agent shall be entitled to receive commissions at such rates as may be agreed upon between the Agent and the Companies.

7. In the event of the termination of this Agreement, and provided the Agent has promptly accounted for and paid to each of the Companies all premiums for which the Agent may be liable and is not otherwise financially indebted to any of the Companies, each of the Companies agrees that the Agent's record of policyholders and expiration dates of policies or bonds shall remain in his exclusive possession and that said Company's record or knowledge of names of policyholders and expiration dates shall not be referred or communicated by said Company to any other agents nor used by said Company for purposes of solicitation.

This Agreement is executed in duplicate this _____ day of _____, 19____ and by its execution any previous agency Agreement, or Agreements, between the Agent and any or all of the Companies covering any of the lines of business covered hereby are hereby cancelled.

WITNESSES:

THE ATINA CASUALTY AND SURETY COMPANY
THE STANDARD FIRE INSURANCE COMPANY
Hartford 15, Connecticut

By _____
Designated Representative

Resident at _____

THE TRAVELERS INSURANCE COMPANY • THE TRAVELERS INDEMNITY COMPANY

CASUALTY—FIRE
AGENCY DEPARTMENT



HARTFORD 15, CONNECTICUT

LETTER TRAVELERS TO D'ARPA 5/18/62

13

May 18, 1962

Mr. Robert E. D'Arpa
Ramac Resources, Inc.
330 Fifth Avenue
Pelham, New York

Dear Mr. D'Arpa:

I have discussed the proposed test which you outlined to me in your letter of May 15 with the people who set the Travelers policy in such matters. All of us are extremely interested in the great possibilities of this device which would provide the important information concerning expiration dates for suburban markets.

Because of the Travelers commitment to the independent system of agency representation (that is, the ownership of expirations by the agent himself) we cannot at the present time agree to be responsible as a company for the purchase of this information. Any guarantee to pay for the acquisition of this information with company funds would put us in a discriminatory position as far as relationships with our existing agents as well as our new agents are concerned.

We would be very happy to pursue the idea of offering this service to our own agents to be purchased by them. I personally would be happy to determine in certain areas (say, northern New Jersey) what agents of ours, particularly new ones, would be interested in purchasing these expiration dates, but at the present time the Travelers will not pay for this information itself. With this in mind you may want to reconsider the details of the proposition.

Very truly yours

John R. Cookley
Superintendent of Agencies

ONLY COPY AVAILABLE

215a

NOTICE TO TRAVELERS' MANAGERS 6/25/62

HARTFORD 15, CONNECTICUT

June 25, 1962

MANAGERS - CASUALTY-FIRE AGENCY DEPARTMENT (U.S.)

We have reproduced on the reverse a letter sent by a Hartford insurance company to its agents countrywide. You will be interested in knowing that this expiration list service was offered to and rejected by The Travelers.

We are aware of only one nationwide insurance company presently subscribing to this service, but it can reasonably be expected that additional segments of the industry will elect to use this prospecting medium in the future. Thus we should alert our producers to this development, and emphasize to them the new peril which threatens the security they have in their ownership of expirations. In bulletins to your agents you should include copy along the following lines -

EXPIRATIONS FOR SALE!

It's true! Only recently The Travelers was offered expiration lists on automobile policies compiled by telephone and personal interviews. These lists will be complete enough to catalogue the expiration date of every automobile policy in your county, city, or neighborhood! Of course we rejected the proposal - we will have no part in tampering with your ownership of renewals. You truly own your renewals because of two things -

1. Your Travelers contract says so; a basic tenet of the American Agency System, to which we wholeheartedly subscribe, says so, and
2. Your customer will want to renew his automobile insurance with you if he is satisfied that you are providing him with the best protection in the best insurance company which represents true value.

It is reasonable to assume that some segments of the insurance industry will subscribe to this service. Then your competition presumably will be able to solicit your renewals at the optimum time.

We believe that the Travelers automobile policy from the Travelers Agent is most likely to renew.

VVR:B

V. V. Roby
Vice President

216a

Travelers P-3 22
22822

June 1962

TO ALL ——— GROUP AGENTS

Just recently the proposal was made to us that The ——— Insurance Group purchase from a national research service the names of automobile insurance policyholders along with the expiration dates of their policies. The ——— is, however, unwilling to be in the position of furnishing to one independent agent the names and expiration dates of another agent's policyholders.

Nonetheless, we feel that we should advise you that this information has been offered for sale to us and to other insurance companies. Obviously, the impact of this is that your competition may in the future be working with an actual expiration list of your automobile policyholders, contacting them at just the right time.

As always, the best defense against this development is prompt, personal solicitation of renewals offering counsel and protection of high quality.

Sincerely yours

Exhibit
Folder

The Travelers

The Travelers Insurance Company
The Travelers Indemnity Company

TRAVELERS' MEMO TO AGENTS
HARTFORD OFFICE 7/5/62
740 Main Street
HARTFORD 2, CONNECTICUT
Telephone: Jackson 4-5941

AGENCY DEPARTMENT
CASUALTY, FIDELITY AND SURETY
LESTER F. CROSSLEY, Manager

*Bills
for your info
7/18/62*

July 5, 1962

TO: PRODUCERS

EXPIRATIONS FOR SALE:

It's true! Only recently The Travelers was offered expiration lists on automobile policies compiled by telephone and personal interviews. These lists will be complete enough to catalogue the expiration date of every automobile policy in your county, city, or neighborhood! Of course we rejected the proposal - we will have no part in tampering with your ownership of renewals. You truly own your renewals because of two things -

1. Your Travelers contract says so; a basic tenet of the American Agency System, to which we wholeheartedly subscribe, says so, and
2. Your customer will want to renew his automobile insurance with you if he is satisfied that you are providing him with the best protection in the best insurance company which represents true value.

It is reasonable to assume that some segments of the insurance industry will subscribe to this service. Then your competition presumably will be able to solicit your renewals at the optimum time.

We believe that the Travelers automobile policy from the Travelers Agent is most likely to renew.

L. F. Crossley
L. F. Crossley, Manager

HOME OFFICE: 700 MAIN STREET, HARTFORD 15, CONNECTICUT

EXHIBIT "D"

ONLY COPY AVAILABLE
218a

SAMPLE TRAVELERS AGENCY CONTRACT

THE TRAVELERS INSURANCE COMPANY }
 THE TRAVELERS INDEMNITY COMPANY } of Hartford, Connecticut, hereinafter called the Company, and

of _____ hereinafter called the Agent, pursuant to request that the underwriting facilities and other services of the Company be made available to the undersigned as Agent and for the considerations hereinafter expressed, agree together as follows:

1. The territory within which the Agent may act shall be the following:

2. This contract shall become effective on the _____ day of _____ 19____.

3. The Agent has full power and authority to solicit applications or proposals for insurance for such classes of risks covered by the supplement or supplements attached hereto and made a part of this contract as the Company from time to time may authorize to be solicited; to countersign policies of insurance, renewal receipts, certificates, and endorsements pertaining to the lines of insurance covered by this contract unless otherwise advised; to collect, receive, and receipt for premiums on insurance tendered by the Agent to and accepted by the Company; and to retain out of premiums so collected, except as hereinafter noted, as full compensation on business so placed with the Company, commissions as hereinafter indicated:

The Agent shall promptly forward applications, proposals or daily reports and pay over premiums to the Company's Office at _____

4. It is a condition of this contract that the Agent shall refund ratably to the Company, on business heretofore or hereafter written, commissions on canceled insurance and on reductions in premiums at the same rate at which such commissions were originally retained and that the Company at any time, by written notice to the Agent, may change the commissions allowed under this contract as to policies effective on and after date of such notice.

5. The Agent has no authority to make, alter, vary, or discharge any policy contract; to extend the time for payment of premiums except as authorized in writing by the Company; to waive or extend any policy obligation or condition; to incur any liability in behalf of the Company; or to insert any advertisement respecting the Company in any publication whatever without the written consent of the Company first obtained.

6. The Company shall not be responsible for agency expenses such as rentals, transportation facilities, clerk hire, solicitors' fees, postage, advertising, exchange, personal local license fees, or any other agency expenses whatsoever.

7. The Agent shall be responsible for all risks placed on the books of the Company through his agency by any sub-agents or brokers together with all premiums or moneys collected by them in connection with such risks the same as if they had been produced directly by the Agent.

8. Any Company supplies furnished to the Agent by the Company shall always remain the property of the Company and shall be returned to the Company or its representatives promptly upon demand.

9. In the event of termination of this contract, provided the Agent shall pay all collected premiums to the Company immediately, the Agent's records, use, and control of expirations shall remain his property and be left in his absolute possession.

10. This contract cancels all previous contracts or agreements whether oral or written between any of The Travelers Companies and the Agent covering the lines of insurance referred to in this contract and may be terminated by either party at any time upon written notice to the other.

IN WITNESS WHEREOF, the Company has caused this contract to be signed at the Home Office and the Agent has subscribed his name hereto this _____ day of _____ 19____.

THE TRAVELERS INSURANCE COMPANY
 THE TRAVELERS INDEMNITY COMPANY

J. J. Sullivan
 President

Agent

Nominated by

L. F. Davidson
 Secretary, Agency Services Department

219 a

Travelers P-1-34 Authorized Signature

Supplement to contract with _____

of _____ dated _____

I. Casualty, Fidelity and Surety Lines:

Lines of Insurance	Percent of Premiums
a-1. Workmen's Compensation—except as stated below.....	10
2. " " —Graded Expense Rating Plan	
(1) On the first \$1,000 of standard premium on the individual risk.....	10
(2) On the next \$4,000 of standard premium on the individual risk.....	7½
(3) On all standard premium in excess of \$5,000 on the individual risk.....	5
b-1. Liability—Bodily Injury and Property Damage—except as stated below.....	17½
2. " —Employers'.....	10
c-1. Automobile—Liability—Bodily Injury (including Medical Payments, Death and Disability, and Family Protection) and Property Damage—except as stated below.....	15
2. " —Liability—Bodily Injury (including Medical Payments, Death and Disability, and Family Protection) and Property Damage—Class 2 Private Passenger (Classes 7, 8, and 9 Travelers Plan), Public Passenger Carrying, and Long Haul Truckmen.....	10
3. " —Physical Damage (including Comprehensive, Personal Effects, Towing, etc.) and Collision.....	20
d- Burglary.....	20
e- Glass.....	20
f- Boiler and Machinery	
(1) On the first \$3,000 of premium on the individual risk.....	17½
(2) On all premium in excess of \$3,000 on the individual risk.....	10½
g-1. Bonds—Fidelity, Surety, and Forgery—except as stated below.....	20
2. " —Depository.....	15
3. " —Blanket—Commercial, Position, and Public Employees.....	15
4. " — " —Bankers', Brokers', Insurance Companies', Building and Loan, Securities, and Forgery and Alteration.....	10
5. " —New York State Alcoholic Beverage Control Board.....	10

NOTE: The above commissions shall not apply to policies, combinations of policies or bonds (1) any portion of which covers exposures in states other than indicated in the territory above described, (2) which are written under a rating plan contemplating special commissions or a special method for computing or paying of commissions, (3) which involve execution or countersignature by another agent, or (4) bonds covering contracts of \$2,500,000 and over, on all of which the commissions shall be as quoted by the Company.

II. Fire and Allied, Marine and Multiple Peril Lines:

Commissions in accord with the commission scale (or later editions thereof) adopted by the Company as applicable to the class and location of the risk and the Agent's classifications.

LINES OTHER THAN MARINE

The Agent is classified as _____ Agent and as

such _____ authorized to countersign _____ to issue and renew policies of
(is) or (is not) (and) or (but not)

insurance of the Company.

MARINE LINES

Authority to bind the Company and/or to issue and renew policies of insurance pertaining to Marine Lines is not covered by this contract but may be extended specifically by an authorized representative of the Company in writing.

CONTRACT

WITH

THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INDEMNITY COMPANY

HARTFORD, CONNECTICUT

Name _____

Place _____

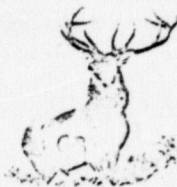
Date _____ 19____

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J. C. HULLETT
PRESIDENT AND
CHAIRMAN OF FINANCE COMMITTEE



HARTFORD REJECTION LETTER

6

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

May 31, 1962

Exhibit 15
P. 15 of T.

Mr. Mack Wallach, President
Romac Resources, Inc.
330 Fifth Avenue
Pelham, New York

Dear Mr. Wallach:

This is to reply to your letter of May 9.

We are sorry to report to you that The Hartford Insurance Group is not interested in the purchase of the names of automobile insurance policyholders along with the expiration dates of their policies.

We appreciate your interest in our organization and regret that the conclusion to our discussions with Mr. D'Arpa is a negative one.

Sincerely,

Channing Barlow

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PRESIDENT AND
CHAIRMAN OF FINANCE COMMITTEE

HARTFORD (BARLOW) LETTER TO ALL
HARTFORD GROUP AGENTS 6/6/62

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

June 6, 1962

TO ALL HARTFORD GROUP AGENTS

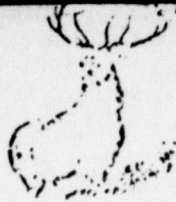
Just recently the proposal was made to us that The Hartford Insurance Group purchase from a national research service the names of automobile insurance policyholders along with the expiration dates of their policies. The Hartford is, however, unwilling to be in the position of furnishing to one independent agent the names and expiration dates of another agent's policyholders.

Nonetheless, we feel that we should advise you that this information has been offered for sale to us and to other insurance companies. Obviously, the impact of this is that your competition may in the future be working with an actual expiration list of your automobile policyholders, contacting them at just the right time.

As always, the best defense against this development is prompt, personal solicitation of renewals offering counsel and protection of high quality.

Sincerely yours,

223a



HARTFORD (BARLOW) LETTER TO ALL
HARTFORD GROUP AGENTS 6/18/62

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

June 18, 1962

TO ALL HARTFORD GROUP AGENTS

Automobile Insurance Expirations

Our earlier letter of June 6 reported to you that The Hartford had refused to purchase from a private research service the names of automobile policyholders along with the expiration dates of their policies.

Since that time many agents have asked us how research services could get the type of information which is offered for sale. We are informed that researchers glean this information from telephone and personal interviews with car owners which ask questions on a variety of topics, automobile insurance being only one. It should be emphasized that, to the best of our knowledge, no state or governmental unit, insurance company or insurance agency is providing any of the data.

Sincerely,